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In the
Supreme Court of the United States

OCTOBER TERM, 1996

STATE OF NEW JERSEY,

Plaintiff,

v.

STATE OF NEW YORK,

Defendant.

**ON EXCEPTIONS TO THE REPORT OF THE
SPECIAL MASTER**

**EXCEPTIONS OF THE STATE OF NEW JERSEY
AND BRIEF FOR THE STATE OF NEW JERSEY
IN SUPPORT OF EXCEPTIONS**

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EXCEPTIONS OF THE STATE OF NEW JERSEY

New Jersey agrees with the principal findings and conclusions of the Special Master and takes narrow exceptions to his Final Report as follows: 1) the Special Master erred in concluding that New York's jurisdiction on Ellis Island extends to the low water line of the Island as it existed in 1834, rather than the mean high water line; 2) the Special Master erred in his decision to refashion a boundary for reasons of practicality and convenience instead of adopting a boundary based on the United States Coast Survey of 1857; and 3) the Special Master erred in finding that the pier extending from Ellis Island in 1834 was supported by landfill and, therefore, was an area within New York's jurisdiction. These exceptions are consistent with the positions taken by New Jersey throughout this action.

Respectfully submitted.

PETER VERNIERO
Attorney General of New Jersey



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BRIEF FOR THE STATE OF NEW JERSEY
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JURISDICTION

The Court granted the motion of the State of New Jersey for leave to file a complaint on May 16, 1994. 511 U.S. 1080. The jurisdiction of this Court rests on Article III, Sec. 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. §1251(a). *Mississippi v. Louisiana*, 506 U.S. 73 (1992).

STATUTES INVOLVED

Compact between New Jersey and New York. 4 Stat. 708 (1834); 1834 N.Y. Laws 8; 1833-34 N.J. Laws 118.

INTRODUCTION

In 1834, New Jersey and New York entered into a Compact to establish their territorial limits and jurisdiction. Ellis Island was then about 2 3/4 acres on the New Jersey side of the boundary established at the middle of New York Bay. The federal government owned the Island, having acquired title and jurisdiction over the property, to its mean high water line, from New York by 1808. Under the 1834 Compact, New York retained its then "present jurisdiction" on Ellis Island. New York was also permitted to exercise jurisdiction over the waters on the New Jersey side of the boundary in New York Harbor. The Compact further provided that New Jersey "shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York" and other waters between the States.

In 1890, the United States government selected Ellis Island as the site for the immigration station in New York Harbor. Additional space was needed for the immigration facilities and the federal government began to fill the submerged lands around the original Island. New Jersey objected to the filling of its lands and in 1904, the federal government secured a deed from New Jersey to land under water below the mean high water line of the original Island. At the time, the Attorney General of the United States, William H. Moody, wrote that there was no question as to New York's ownership and jurisdiction over Ellis Island "proper" and its ability to transfer the same to the United States, but under the 1834 Compact, ownership of the surrounding submerged lands was in New Jersey.

This Court, in *Central R.R. Co. v. Mayor of Jersey City*, 209 U.S. 473 (1908), held that the boundary between the States at the middle of the waters between New Jersey and New York was a division of territorial sovereignty. For a unanimous Court, Justice Holmes wrote that although the Compact permitted New York to exercise limited police

power jurisdiction in New Jersey waters, New Jersey remained sovereign over the lands under its waters. Justice Holmes further stated that the right of property in the Compact "is to be taken primarily to refer to ultimate sovereign rights, in pursuance of the settlement of the territorial limits" 209 U.S. at 478.

The filling of New Jersey lands was accomplished in stages. The original Island was first enlarged. Then, two additional and separate islands were created and joined by bridges or gangways over open water. By 1934, the three islands had been joined by fill. Some 24 acres of filled land were made around the original 2 3/4 acres. Under the Compact of 1834, the filling occurred on New Jersey territory, on land subject to New Jersey's "ultimate sovereign rights." *Id.*

New Jersey brought this original action to resolve its dispute with New York regarding their boundary on Ellis Island. New Jersey claims that New York's "present jurisdiction" on Ellis Island is limited to the Island that existed in 1834 and does not extend to the portions of the Island subsequently created by filling lands under water. In his comprehensive Final Report, the Special Master agreed that under the Compact New Jersey remains sovereign over the disputed territory and that the decisions of this Court preclude New York from extending its territorial jurisdiction over the filled lands because the filling was an avulsive change. Moreover, the Special Master found that New York failed to carry its burden of establishing sovereignty over the filled portions of the Island by prescription and acquiescence.

The Special Master recommended that the Court draw the boundary on Ellis Island by apportioning some 5.1 acres to New York and the remaining 22.4 acres to New Jersey. This division of acreage is based on the Master's finding that New York's jurisdiction under the Compact on the original Island extends to low water, as depicted on the United States Coast

Survey of 1857. However, the Special Master recommends that the boundary not follow the line of low water on that Survey. Instead, based on what he perceived to be reasons of practicality and convenience, the Special Master suggests that the Court create an entirely new boundary line for the States.

New Jersey respectfully submits that the Court should adhere to the Special Master's considered resolution of the principal issue in this case: New York's jurisdiction on Ellis Island is confined to the Island as it existed at the time the Compact was made. However, New Jersey takes limited exception to the Special Master's Report. New Jersey excepts to the Special Master's conclusion that New York's jurisdiction under the Compact extends to the low water line. New York's jurisdiction should not encompass any land below the mean high water line as depicted on the 1857 United States Coast Survey and should not include the area represented by a pier which was on the south side of the Island in 1834 since there was no credible evidence that the pier was built on fill. Thus, New York's territory should encompass only 2.74 acres, not the 5.1 acres suggested by the Special Master. Further, New Jersey maintains that the Court should not completely refashion the boundary line in the manner suggested by the Special Master but should instead determine the boundary based on the mean high water line, as depicted on the 1857 United States Coast Survey.¹

A. Procedural history

New Jersey commenced this original action on April 23, 1993, by filing a motion for leave to file a complaint against New York. On May 16, 1994, the Court granted New Jersey leave to proceed. 511 U.S. 1080. New York filed its answer on July 15, 1994. On October 11, 1994, the Court referred

¹ The designation "P" as used in this Brief refers to New Jersey's trial exhibits, the designation "D" refers to New York's trial exhibits, and "Appendix" refers to the Appendix to this Brief.

the matter to Paul R. Verkuil, who was designated as Special Master. 513 U.S. 924.

The City of New York moved to intervene, and the Court denied that request. 115 S. Ct. 1996 (1995). Subsequently, on April 28, 1995 and November 21, 1995, the Special Master granted motions by New York City and Jersey City, New Jersey to participate as active *amici*. In addition, on October 19, 1995, the Special Master granted Hudson County, New Jersey's motion to file a brief as *amicus curiae*.

On March 5, 1996, New Jersey and New York filed motions for summary judgment. The National Trust for Historic Preservation, New York Landmarks Conservancy, Municipal Art Society of New York, Preservation League of New York State and Historic Districts Council ("Preservation *Amici*") moved on March 26, 1996 to file an *amicus* brief. The Special Master granted the motion on April 11, 1996. The Special Master heard argument on the summary judgment motions on April 11, 1996 and, for reasons set forth in an Interim Opinion, denied both motions on May 9, 1996.

The States filed pre-trial motions by June 10, 1996. On June 21, 1996, the Special Master issued an Opinion and Order which addressed these motions. In addition, prior to trial, New York requested permission to amend the pleadings to add the affirmative defense of laches. The Special Master denied the motion but subsequently allowed New York to present evidence pertaining to New York's claim at trial.

A lengthy trial was conducted before the Special Master from July 10, 1996 to August 15, 1996 at the Court and on Ellis Island. The trial yielded a transcript of over 4,000 pages. During the trial, the Special Master heard the testimony of numerous witnesses, including ten expert witnesses. In addition, the Special Master received into evidence nearly 2,000 documents.

The Special Master issued his Final Report on March 31, 1997, in which he concluded that New Jersey is sovereign over the landfilled portions of Ellis Island created by the federal government below the Island's low water line as of 1834. The Special Master directed the States to conduct surveys on Ellis Island to precisely delineate his recommended boundary. On April 22, 1997, New Jersey filed two alternative surveys (Surveys A and B); New York chose not to prepare a survey. Supp. Report at 6. The Special Master convened a conference on Ellis Island on May 14, 1997 to consider the surveys. The Special Master chose New Jersey Survey A, but directed that it be modified. Supp. Report at 7-10. On May 30, 1997, the Special Master issued a Supplement to his Final Report, which contains a precise description of the recommended boundary. Survey A, as modified, has been filed with the Clerk of the Court. Supp. Report at 10-18. The Special Master's Final Report and Supplemental Report were filed with this Court on June 16, 1997. 65 U.S.L.W. 3825.

B. Overview of the Special Master's report and recommendations.

1. Interpretation of the Compact of 1834.

The Special Master addressed the purpose of the Compact of 1834 and the relationship between Articles I, II and III. Article I establishes the boundary between the States at the middle of the Hudson River, of the Bay of New York, and other specified waters. Article II provides that New York "shall retain its present jurisdiction of and over Bedlow's and Ellis's islands" Under Article III, New York "shall have and enjoy" exclusive jurisdiction over certain waters, including the waters of the Hudson River and Bay of New York, "and of and over the lands covered by the said waters to the low water-mark on the . . . New Jersey side thereof" Report at 4a.

New Jersey argued that the main purpose of the Compact was to set a permanent boundary between the States and that this boundary was established in Article I. New Jersey also argued that Article III did not alter the boundary set in Article I, but conferred on New York limited, extra-territorial police power jurisdiction within New Jersey's sovereign territory. In support of its position, New Jersey relied on this Court's interpretation of Articles I and III adopted in *Central R.R. Co., supra*, wherein the Court squarely held in an opinion by Justice Holmes that the Article I boundary was the line of sovereignty between the States.

New Jersey asserted that Article II, which provides that New York shall "retain its present jurisdiction" over Ellis Island, pertained only to Ellis Island as it existed when the Compact was adopted in 1834. Thus, New Jersey argued that since Ellis Island was located entirely within New Jersey's Article I boundary, the landfilled portions of the Island created by the United States after 1834 were under New Jersey's sovereignty and jurisdiction. New Jersey maintained, therefore, that its boundary with New York on the Island is at the mean high water line of Ellis Island as it existed in 1834. Report at 19-20, 49-50.

New York argued that the boundary established in Article I was not a sovereign boundary but instead was a line that separated New Jersey's property from New York's property. New York insisted that it had sovereignty to the low water line of the New Jersey shore, subject only to New Jersey's right of property. In this respect, New York maintained that Justice Holmes was "wrong" when he found in *Central R.R. Co. v. Mayor of Jersey City* that under the Compact, boundary meant sovereignty. Report at 22. New York thus asserted that its sovereign territory under Article I encompassed Ellis Island. New York further argued that under Article II, New York was sovereign over Ellis Island, regardless of its size.

The Special Master conducted a thorough analysis of the Compact, the negotiations pre-dating the Compact, the States' activities post-dating the Compact, and legal precedent interpreting the Compact. He then adopted New Jersey's position, which comported with the interpretation of Articles I and III reached by this Court in *Central R.R. Co.*, *supra*.² The Special Master concluded that the Compact establishes a sovereign boundary in Article I, that Article III confers limited, extra-territorial jurisdiction on New York, and that the boundary set in Article I was not altered by Article III. Thus, he determined that after adoption of the Compact, the underwater lands surrounding Ellis Island which subsequently were filled by the United States remained under New Jersey sovereignty. Moreover, although jurisdiction is an attribute of sovereignty, a state may exercise jurisdiction outside of its territory. In Articles III and V of the Compact, the States agreed that each would exercise such extra-territorial jurisdiction. Thus, as the Special Master concluded, the exclusive jurisdiction conferred upon New York in Article III was not to be equated with sovereignty, but was limited police power jurisdiction over the waters of New York Harbor.

The Special Master concluded that under New York's interpretation of Articles I and III, the boundary line set in Article I would be rendered meaningless by Articles III and V, and the provisions of Articles III and V giving each State the "exclusive right of property" would become superfluous. He reasoned that such a result would contravene the well established principle that all terms of an interstate Compact,

² As Justice Holmes pointed out in *Central R.R. Co.*, the Court's interpretation of the Compact was based on prior rulings of the highest courts in New Jersey and New York. See *Central R.R. Co. v. Mayor of Jersey City*, 61 A. 1118 (N.J. 1905); *People v. Central R.R. Co.*, 42 N.Y. 283, *appeal dismissed*, 79 U.S. (12 Wall.) 455 (1870). Justice Holmes commented, "it would be a strange result if this Court should be driven to a different conclusion from that reached by both parties concerned." *Central R.R. Co.*, *supra*, 208 U.S. at 479.

or statute, should be given effect, and that Compact provisions should be harmonized to avoid rendering any provision inoperative. Report at 55-56.

In addition, the Special Master rejected New York's theory that New Jersey's boundary was contingent on the exercise of wharfing out rights, reasoning that such an interpretation "would create a jagged and indeterminate boundary line that would shift as New Jersey added to or removed her wharves or created new ones." Report at 63. The Special Master characterized New York's Compact reading as "convoluted" and concluded that if the drafters had intended to delineate five separate boundaries, as New York argued, "surely the Compact would have described this explicitly." Report at 67.³

The Special Master also conducted a thorough analysis of Article II, and determined that this Article settled the question of which State was sovereign over the Island in 1834, but did not resolve the question of sovereignty over the landfilled portions of the Island added after 1834. Also, while Article III gave both New York and New Jersey jurisdiction within the same territorial area, Article II did not. The Special Master concluded on this basis that the jurisdiction conferred on New York in Article II was the equivalent of sovereignty. Report at 60-63.

The Special Master's interpretation of Article II did not precisely comport with the positions of either New York or

³ In review of a New York exhibit entitled "The Five (5) Meanings of Boundary," Report at 10a, the Special Master remarked that "New York's creative interpretation [of the Compact] stretches beyond its breaking point the apparent intent of the drafters." Report at 60. The Special Master rejected New York's theory of a "shifting interstate boundary" under Article III, whereby New York argued "New Jersey could, if the Federal Government didn't object . . . wharf out to Mars" Report at 63-67; and T4107-5 to T4108-2.

New Jersey. New York argued that Article II gave it sovereignty over an "Ellis Island" of unlimited size, because the Article did not contain any size limitation.⁴ New Jersey argued that Article II limited New York's jurisdiction to Ellis Island as it existed in 1834, because the Article provided that New York would retain its "present" jurisdiction and included other present-tense language. The Special Master concluded that the term "present jurisdiction" was used because in 1834, Ellis Island was a federal military installation over which New York had ceded jurisdiction and conveyed ownership. Thus, he rejected both States' contentions that Article II settled the question of sovereignty over an expanded Ellis Island. Report at 60-62.⁵

⁴ The Special Master correctly found that the land that now comprises Ellis Island was at one time after 1834 three separate islands. He noted that New York's expert produced a document "replete with evidence supporting th[e] conclusion" that "the three land masses were initially separate and inter-connected for purposes of communications by gangways built on pilings." Report at 95. Another of New York's experts confirmed those conclusions, as did a photograph that shows that Island No. Two was surrounded by water at one time. Report at 95-96, 13a. One of New Jersey's expert historians, James P. Shenton, cited numerous documents supporting the Special Master's conclusion. See P487, ¶¶28-29. The Special Master aptly concluded that New York could not claim jurisdiction under the Compact over any new islands created in the vicinity of Ellis Island after 1834. Report at 94.

⁵ New Jersey does not agree with the Special Master's view that Article II does not provide the answer to the question of whether New Jersey has sovereignty over the filled portions of Ellis Island. Article II only permits New York to exercise its "present jurisdiction" on Ellis Island, which was not "exclusive" but rather limited by its previous cession of jurisdiction to the federal government in 1800, and conveyance of property rights to the high water line of Ellis Island under the instruments of cession and conveyance. See Appendix A and B at 1a, 2a. Since New York's jurisdiction is limited in Article II, New Jersey has sovereignty over the filled lands under Article I because the lands are within New Jersey's territorial limits.

2. Sovereignty over the landfilled portions of Ellis Island; the common law of accretion and avulsion.

There is no dispute between the parties that the additions to Ellis Island after 1890 were artificially added by fill and that this constituted an avulsive and not an accretive occurrence. Report at 97. The Special Master concluded that the Compact does not specifically address the expansion by landfill of Ellis Island. The Special Master found that the determination of which State is sovereign over the portions of Ellis Island created by landfill is reached through application of the common law of accretion and avulsion.

The Special Master correctly determined that under the long-standing holdings of this Court, the boundary between two sovereigns is not altered by avulsion. Report at 98, citing *Arkansas v. Tennessee*, 310 U.S. 563, 566, 569-71 (1940); *Missouri v. Nebraska*, 196 U.S. 23, 35-36 (1904). As noted by the Special Master, application of this doctrine was recently reaffirmed by this Court in *Georgia v. South Carolina*, 497 U.S. 376, 404 (1990), as necessary to ensure that "one cannot extend one's own property into the water by landfilling or purposefully causing accretion."

Application of these principles led the Special Master to the correct conclusion that the filled portions of Ellis Island fall within the sovereignty of New Jersey. As the Special Master noted, "[n]either the United States nor New York can expand ownership or territorial claims to Ellis Island merely by adding to the land under water." Report at 99. Because Ellis Island was expanded through avulsion in the period after 1890, the sovereign boundary of the two States established in the Compact remains unchanged.

3. Prescription and acquiescence.

(a) *New York's claims and the Special Master's conclusion.*

New York argued that even if New Jersey was sovereign of the filled portions of Ellis Island under the Compact of 1834, New York had acquired sovereignty over the whole of Ellis Island under the doctrine of prescription and acquiescence.⁶ The Special Master was correct in finding as fact that since the Compact of 1834, New Jersey has exercised jurisdiction over the filled portions of Ellis Island through sovereign acts and New Jersey has never acquiesced in New York's isolated acts of prescription. Report at 2. New York failed to prove by a preponderance of evidence, both "a long and continuous possession of, and assertion of sovereignty over" the filled portions of the Island, and a lengthy acquiescence by New Jersey in New York's purported acts of possession and control over the disputed land. Report at 103, citing *Illinois v. Kentucky*, 500 U.S. 380, 384 (1991); *Georgia v. South Carolina*, *supra*, 497 U.S. at 389.

The Special Master considered New York's claim in the context of four distinct periods. The first period covers the years from 1834 to 1890 when there was no landfill over which New York could exercise any governmental authority. Thus, New York could not claim prescription in that time. In the years from 1890 to 1934, the United States exercised virtually exclusive dominion and control for immigration purposes; and in the years from 1934-1955, the federal government used the Island for immigration and, to a limited

⁶ On the eve of trial, New York sought to amend its answer to include laches as an affirmative defense. New Jersey argued that laches cannot be employed as a substitute to proof of prescription and acquiescence. The Special Master denied New York's application but permitted New York to offer evidence relevant to that defense. Interim Op. at 51; Report at 27-29.

extent, for military purposes. After 1955, the Island was virtually abandoned until the Main Building was renovated and became the site of an immigration museum. In that last period, the Special Master found that New Jersey was "much too active in opposition to New York's jurisdiction for New York to carry her burden on acquiescence." Report at 106.

The Special Master exhaustively analyzed the extensive record and concluded that New York had failed to sustain her burden of showing that it had prescribed its laws in the filled portion of the Island during the years he deemed most significant to the analysis, notably 1890 to 1955. New York's acts, the Special Master concluded, were:

intermittent, often inconclusive and certainly disputed. Even assuming, *arguendo*, sufficient proof of prescription on New York's part, New Jersey did not acquiesce in her neighbor State's actions during the telling historical periods. The record reflects that from 1890 until this case was filed, New Jersey made consistent assertions of her underlying sovereign claims despite the pervasive federal presence in the Island's life. [Report at 144].

(b) Federal ownership and jurisdiction on Ellis Island

The Special Master correctly placed significant weight on the fact that during the relevant periods Ellis Island has been owned by and controlled by the federal government.⁷ Federal ownership and pervasive operational control left both states with little room to exercise their governmental power,

⁷ A survey prepared for this case indicates that the federal government filled 0.57 acres of New Jersey land outside the bounds of New Jersey's 1904 transfer of title to the United States. The Master stated that this territory "will remain within [New Jersey's] sovereign control." Report at 167, n. 70; Supp. Report, Survey A.

particularly since the federal government used the property for immigration and military purposes. Report at 110.

New Jersey maintained that since New York, unlike New Jersey, had ceded virtually all of its jurisdiction over the subject property to the federal government, New York was precluded as a matter of law from establishing prescription. The Special Master found that New York's cessions of jurisdiction did not necessarily foreclose New York from establishing prescription; nevertheless, he concluded that the fact that Ellis Island was a federal enclave was a "relevant and complicating factor in interpreting the quality of New York's prescriptive acts and New Jersey's countervailing acts of nonacquiescence." Report at 110-11.⁸

(c) *New Jersey's sovereign acts*

The Special Master found that during the relevant periods, New Jersey "maintained her dominion over the filled portion of the Island," Report at 124, and exercised sovereign authority over the disputed land. *Id.* at 123. The most significant of these sovereign acts, in the Special Master's opinion, was New Jersey's 1904 transfer of title to the submerged lands below the mean high water line of the

⁸ The Court should revisit the Special Master's analysis on this point. Although federal ownership and jurisdiction over the Island is certainly relevant to New York claims, the Court should find that New York's transfer of jurisdiction over the original Island and the surrounding lands under water left it with far too little governmental authority upon which to claim prescription. "When the United States acquires title to lands, which are purchased by the consent of the legislature of the state within which they are situated . . . the Federal jurisdiction is exclusive of all State authority." *United States v. Unzeuta*, 281 U.S. 138, 142 (1930). *Accord Murray v. Joe Garrick & Co.*, 291 U.S. 315, 318 (1934); and see *Macomber v. Bose*, 401 F.2d 545, 546 (9th Cir. 1968) (holding that cession of jurisdiction by a state results in federal government becoming the "only authority operating within the ceded area.").

original Island. Soon after the filling of these lands started, New Jersey objected to the appropriation of its property, and in 1904 the federal government agreed to acquire title. In 1880, New York purported to transfer title and jurisdiction over the "land covered with water, adjacent and contiguous to the lands of the United States, in the Harbor of New York, as . . . Ellis's" Island. Appendix H at 25a-26a. The federal government in 1904 rejected the validity of that transfer and instead sought title from New Jersey. Report at 112-13, citing T886, T953-T954, T4039-T4040; *see also* Report at 125-26 and Appendix C at 6a.⁹

The Special Master added that recognition by the federal government of New Jersey's legal status over the submerged lands was "real and measured." Report at 125. The United States Attorney General William H. Moody wrote to the New Jersey Board of Riparian Commissioners on July 15, 1904 and stated that lands on New Jersey's side of its boundary with New York were owned by and were under New Jersey's jurisdiction. Report at 125-6; *see also* P487, ¶23, citing P338, P351 at p. 4-5 and P342; P144 at 60-61, and Appendix C at 6a. Attorney General Moody stated that New York's jurisdiction and title were limited to "Ellis Island proper," referring to the land area comprising Ellis Island as it existed in 1834. T1447-22 to T1450-4. The deed described the transferred land as located in Hudson County, New Jersey and, at the request of the United States, the deed was recorded in New Jersey. Report at 124; *see also* P487, ¶26, citing P7 and Appendix D at 9a.

⁹ New York had prior to the Compact ceded jurisdiction over and conveyed title to Ellis Island to the federal government, in 1800 and 1808 respectively. The document of conveyance described the subject property as lands "situate in the Bay of New York, surrounded on all sides by the said bay which Island contains by estimation to ordinary high water mark two acres three rood and thirty-five perches . . ." *See* Appendix B at 2a. The area transferred is 2.97 acres. Report at 160-61, n.65

Additionally, New Jersey included Ellis Island on the tax rolls of Jersey City, New Jersey from as early as 1940. The property was listed as exempt realty since it was owned by the federal government. Report at 131. There was evidence, too, of utility taxes for water and gas metered in and paid to New Jersey. Report at 123. New Jersey also issued a waterfront development permit for Ellis Island construction projects in 1933, an assertion by New Jersey of its governmental authority over the development of the waterfront on Ellis Island. Report at 134-135.

In this same period, New Jersey requested that the federal Department of Labor and other federal agencies employ New Jersey workers on Ellis Island projects. The record, as the Master explained, is "replete" with evidence that New Jersey officials, including federal Representative Mary T. Norton, and representatives from labor unions asserted rights on behalf of New Jerseyans to Ellis Island jobs. Report at 133.

In the years after 1955, when the federal government ceased using Ellis Island as an immigration station, and was considering a sale of the property, the dispute between the States sharpened and both States debated the future of the Island, along with its jurisdictional status. Extensive hearings were conducted by a subcommittee of the United States Senate, chaired by Senator Edmund S. Muskie, and the United States Senators from New Jersey and New York participated. Senator Kenneth Keating of New York conceded that a potential sale of the Island was of interest to the Senators from both states. Report at 137. Officials from New Jersey, including the Mayor of Jersey City, attended the hearings and asserted New Jersey's claim to sovereignty over the filled lands. *Id.* In June 1963, after the hearings, Senator Clifford P. Case of New Jersey suggested that New Jersey

and New York enter into a compact concerning jurisdiction of Ellis Island. Report at 138; *see also* P487, ¶¶69-78 ¹⁰

Subsequently, as the Special Master noted, the National Park Service engaged in a series of planning initiatives for the Island and included representatives from New Jersey and New York in the process. Report at 142-43. The planning documents refer to New Jersey and New York. Report at 142-43; *see also* P487, ¶¶81,82, citing P166 and P170 at 9, and Appendix E at 13a. Further, in 1986, after the National Park Service had restored the Main Building on the Island, the Governors of New Jersey and New York endeavored to resolve the dispute over jurisdiction by entering into a Memorandum of Understanding. The Governors agreed to use their best efforts to have legislation enacted which would allow the sharing of tax revenues attributable to Ellis Island (as well as Liberty Island) and have those funds utilized for programs for homeless persons. Report at 143-44, citing 17a-23a. The agreement was in response to New Jersey's assertion of sovereignty and recognition by New York's Chief Executive that New Jersey had the power to levy taxes on the Island. *See* Report at 17a-23a. The agreement was incorporated into law by the State of New Jersey in 1987. *See* N.J. Stat. Ann. 32:32-1 *et seq.* (1990). New York failed to enact the necessary legislation.

¹⁰ The Special Master correctly pointed out that New York officials fully recognized that New Jersey was asserting a claim to Ellis Island. The Mayor of New York City attended the subcommittee hearings and commented, "I think the question of jurisdiction could be ironed out by a meeting of the minds" Report at 137, quoting from P143. Also, in 1965, then Representative John V. Lindsay, who later served as Mayor of New York, recognized in a statement to the House that the filled lands were never New York property and "pertained to the jurisdiction of New Jersey." Report at 138-39, quoting from P154.

(d) *Federal recognition of New Jersey's sovereignty*

The Special Master determined that not only did New Jersey repeatedly assert its claim of sovereignty to the filled portions of Ellis Island, the federal government recognized New Jersey's dominion over the lands during the relevant prescriptive periods. The Special Master found that such recognition was evidenced by the agreement of the federal government, communicated by the United States Attorney General, to request and accept a deed for the underwater lands around the original Island. Report at 124-126; *see also* Appendix C at 6a. Also, the Special Master correctly pointed out that maps produced by the federal government during the period of a state's putative dominion and possession are a relevant indication of the federal government's view on state sovereignty. Report at 119, citing *Michigan v. Wisconsin*, 270 U.S. 295, 316-19 (1926); *Louisiana v. Mississippi*, 202 U.S. 1, 55-57 (1906).

The Special Master found that commencing in 1890, with the onset of large-scale filling of underwater lands around Ellis Island, the federal government issued the first in a series of surveys entitled, "Pierhead and Bulkhead Lines for Ellis' Island, New Jersey, New York Harbor, as recommended by the New York Harbor Line Board." Report at 118-22; *see also* Appendix F and G at 15a-24a. These maps, which were approved by the Secretary of War, are "especially probative of the federal view about sovereignty over Ellis Island." Report at 120.¹¹ One of the surveys was approved

¹¹ The Special Master commented that these maps were to be relied upon for "navigational and defense purposes." Report at 119. That may be true, but the maps were critical to the filling of the submerged lands around the original Island. Without the extension of pierhead and bulkhead lines for Ellis Island, there could have been no expansion of the Island into New Jersey waters. The federal New York Harbor Line Board was established by Act of Congress on August 11, 1888, authorizing the Secretary of War to establish harbor lines beyond which no piers or wharves could be

by Secretary of War Elihu Root, a fact that the Special Master correctly viewed as significant because Root was a distinguished lawyer, active in New York City politics, who later became United States Senator from New York. Report at 120; *see also* Appendix F at 22a.

The Special Master found other evidence of federal recognition of New Jersey's sovereignty over the filled portions of Ellis Island. The waterfront development permit issued by New Jersey in 1933 was in response to an application by the Commissioner of Immigration for the Port of New York, Edward Corsi. Report at 134-34; *see also* P487, ¶28, citing P10, P11. Like Elihu Root, Corsi was a prominent New Yorker. The Special Master noted that Corsi's actions manifested an understanding that although New Jersey had divested itself of property rights to the submerged lands in 1904, it remained the State with sovereign authority in waterfront development matters pertaining to the Island. Report at 135, citing T1288 to T1290, T2549 to T2553, T1367 to T1368. Corsi's view was also accepted by the Department of Treasury and the Army Corps of Engineers, who referred to the location of the 1933 construction projects as located in "Ellis Island, New Jersey." Report at 135, citing P487, ¶27, citing P374, P375, P376, P377, P378, P379 and P380.

Additionally, as the Special Master found, in the 1930's and 1940's, federal officials addressed questions of the location of Ellis Island for the implementation of federal work programs and establishment of wage rates. In 1934 and 1935, the Immigration and Naturalization Service cooperated with

extended nor deposits made in New York Harbor and adjacent waters, except as regulated by the Secretary of War. 25 Stat. 400, 425, P.L. 1888, c.860, §12 (August 11, 1888). The maps were, in essence, a blueprint for the growth of the Island and the designation of the Island as "Ellis Island, New Jersey," a clear and unequivocal statement of the federal government's view that the filled lands were in New Jersey. Appendix F and G at 15a-24a.

the Departments of Treasury and Labor for an equitable distribution of labor between New Jersey and New York for public works projects. The federal action was in response to demands by New Jersey officials and unions seeking work for New Jerseyans on Ellis Island. This was, in the Master's opinion, evidence of non-acquiescence on the part of New Jersey because "New Jersey was basing her claims to jobs for her citizens on her sovereignty over the filled portion of Ellis Island" Report at 132.

The Immigration and Naturalization Service and the Department of Labor again addressed the issue of locality of Ellis Island in the 1940's for purposes of establishing Davis-Bacon wage rates. From 1947 to 1949, the Department of Labor ruled that "New York building trades wage rates . . . *are not* applicable to construction on Ellis Island" P487, ¶46, citing P61 (emphasis in original); *see also* Report at 135, citing P76-85, P490 ¶79. The Secretary of Labor issued formal decisions stating "Ellis Island [is in] New York Harbor, in Hudson County, New Jersey." P62, P63.¹²

In addition, the Special Master found evidence of federal recognition of New Jersey's sovereignty in a legal opinion of the federal Government Services Administration issued in 1963. Report at 140-142. The opinion was prepared at the request of the Senate Subcommittee on Intergovernmental Relations, which recognized that the jurisdictional dispute between New York and New Jersey was hindering plans to sell Ellis Island. This exhaustive legal opinion, which the Special Master found highly probative, specifically states that the "filled-in area" of Ellis Island is "part of New Jersey." Report at 140, citing P144 at 70; *see also* P143 and P144 at 3-4. Notably, the conclusion of the General Services

¹² On June 16, 1949, the Secretary of Labor revised the previous determinations of locality from New Jersey to New York, with no documented explanation. P487, ¶¶45-47 citing P60-P92, P428-P434, P436-P445; *see also* T2641-22 to T2645-17.

Administration ("GSA") has been consistently followed by the federal government since it was issued in 1963. Report at 141.¹³

The Special Master added that the GSA opinion formed the basis for the legal arguments advanced by the federal government in *Collins v. Promark Prods., Inc.*, 956 F.2d 383 (2d Cir. 1992). In that dispute, the United States Attorney for the Southern District of New York, representing the National Park Service, argued that the worker's compensation laws of New Jersey should apply to the claims of a worker injured on the filled portions of Ellis Island, since the landfilled areas are part of New Jersey and under its jurisdiction. Report at 141; see also P487, ¶90 and Report at 144.

(e) *New York's prescriptive acts were isolated and episodic.*

The Special Master carefully considered New York's evidence of prescriptive acts and found them to be "intermittent and equivocal." Report at 145. The Special Master noted that New York's evidence fell short of the "unequivocal acts of prescription demanded by this Court's jurisprudence." *Id.* New Jersey had not challenged New

¹³ The National Park Service maintained this position in a 1968 Master Plan for Ellis Island, P166, and in an "Analysis of Alternatives" issued in December 1980. Report at 142-43, citing P484 at 9; see Appendix E at 13a. The latter document provided a regional setting for the Island, stating that the acreage created by landfill, as well as the surrounding waters, are part of New Jersey. In 1984, the Park Service nominated Ellis Island for a place on the Federal Register of Historic Places and identified the location of the Island as New York and New Jersey. This document was included as an appendix to publications of the National Park Service about the history of Ellis Island and its structures. D74, Vol. III, pp. 1343-50. The covers and contents of each publication refer to Ellis Island as located in both states. Report at 143, citing D952.

York's jurisdiction over the original Island. Thus, as the Master determined, New York was required to demonstrate that its prescriptive acts were taken with regard to the filled lands rather than the original Island. Report at 111. The Special Master concluded, "New York has been able to establish only isolated or episodic prescriptive actions -- and without certainty that these acts occurred on the landfill. The evidence taken as a whole does not prove prescription over the landfill." Report at 118.

The Special Master stated that New York had presented evidence pertaining to the recording of births, deaths and marriages on Ellis Island. The Special Master found, "[t]he evidence of many of these acts is inconclusive with respect to the landfilled portion of the Island." Report at 114. New York's evidence of taxation was also determined by the Special Master to be deficient. As the Master wrote, "New York failed to present more than a scintilla of evidence of her taxing authority in the relevant periods before 1955. Her limited evidence from later years failed to pinpoint the filled portions of the Island." Report at 130.

According to the evidence, New York did not levy or collect taxes attributable to activities on the filled lands until six years ago, hardly a sufficient period to constitute prescription. Since 1990, ARA Leisure Service, Inc. has been charging and remitting tax on certain sales on the Island, and has paid certain corporation taxes to New York State and New York City. There was no other evidence that any person or entity has paid New York taxes with regard to activities on the filled lands.¹⁴

¹⁴ The Special Master found the minimal evidence produced by New York "unconvincing," consisting merely of testimony of a National Park Service employee that he provided New York City non-resident tax forms to federal employees, without any direct evidence of taxes paid by these employees. Report at 115.

The Special Master found that this evidence suffered from two significant weaknesses. First, by 1984 the States' dispute regarding the landfilled portions of the Island had been "cemented." Report at 131. In addition, the evidence of taxation concerns activity in the period after execution of the 1986 Memorandum of Understanding in which New York's Governor recognized New Jersey's authority to collect taxes associated with Ellis Island. The Special Master found that the Memorandum's explicit recognition of New Jersey's right to share the tax revenue collected by *both* States on Ellis Island "nullifies whatever probative value these relatively recent taxing activities might have otherwise been accorded." Report at 131-132.

Further, the Special Master commented that Ellis Island had "apparently" been included in the jurisdiction of the New York City Metropolitan Police Department. Report at 114. The Master suggested that there were two examples of the City exercising its police jurisdiction over Ellis Island but, in this regard, there is no credible evidence that New York enforced its criminal law with regard to any actions on Ellis Island. New York also has no credible evidence that it provided police protection on the Island. T2595-4 to T2614-1 and T3950-23 to T3961-10. New York police did not patrol the Island and there is no documentary proof that the Harbor Police did anything other than patrol the waters around the Island. In any event, as the Special Master commented, whatever actions were taken by New York were offset by New Jersey's own policing of the Island. Report at 114, citing T3636 to T3637.

New York's evidence regarding voting was also considered by the Special Master. New York did not present evidence that any Ellis Island resident voted in a New York election; its evidence only shows that certain individuals were registered to vote in New York. Additionally, New York only presented registers for eight of the more than one hundred years in which New York claimed prescription.

Report at 112, n.43, citing D957-65. Furthermore, since 1953 there has been no person registered to vote in New York who claims a residence on Ellis Island.¹⁵

The Special Master also considered New York's evidence that the federal government used letterhead, date stamps and forms which reference "Ellis Island, New York Harbor, New York" or "Ellis Island, New York." This evidence was offered in an effort to show that there was a general public perception that Ellis Island was part of New York. But the Master found the evidence unpersuasive. The evidence failed to distinguish between the filled and original portions of the Island. There was no indication that the federal government intended by its use of letterhead to make any jurisdictional statement. Moreover, New Jersey presented testimony that post office and immigration service district designations did not follow state lines or boundaries. Report at 116-17, citing T3944, T1494, P490 ¶¶129-34.¹⁶

¹⁵ The Special Master agreed with New Jersey that New York City voting maps provided for nine years did not include the filled lands, but rather "depict the original almond-shaped island." Report at 112, n.43. These maps indicate that New York's inclusion of Ellis Island in its voting districts was limited to the original 2 3/4 acre Island. This is made plain by the fact that the maps also depict Oyster Island, which was dredged away before 1900. D932 at p. 9. Clearly, the Ellis Island depicted on the voting maps is the original Island before it was surrounded by some 24 acres of fill.

¹⁶ New Jersey's expert witness Marian L. Smith, Historian for the United States Immigration and Naturalization Service, testified that from 1891 to 1956, northern New Jersey was part of the New York District and that district boundaries have never been dependent on State lines. The letterhead for the Immigration Station at Ellis Island reflects the location of the main administrative office and post office located on the original Island. T3942-21 to T3950-22.

(f) *A century of conflict is not acquiescence .*

In the Special Master's opinion, New York had "cobbled" together intermittent and equivocal prescriptive acts from the various prescriptive periods. These acts were repeatedly refuted by New Jersey's assertion of dominion over the landfill. New York failed to establish, in the years from 1890 to the present, prescription and acquiescence. Report at 145. The Special Master concluded that the evidence illustrated a jurisdictional conflict between New Jersey and New York over Ellis Island that had persisted for more than one hundred years. Quoting from the Court's decision in *New Jersey v. Delaware*, 291 U.S. 361, 377 (1934), the Special Master determined, "[a]cquiescence is not compatible with a century of conflict." Report at 145.

C. *The recommended boundary on Ellis Island.*

The Special Master has recommended that the boundary between New York and New Jersey be drawn at the low water line of the Island as it existed in 1834. The Special Master reached this conclusion by relying on an offer by New Jersey in 1827 to allow New York to exercise jurisdiction over Ellis Island, and other islands on the New Jersey side of the river, "to the low water mark of same." Report at 72. The Master recognized, however, that the Compact did not include any reference to low water regarding Ellis or any other island and he recognized, too, that he could not resolve with "complete confidence what the parties intended" regarding mean high water or low water. Nonetheless, he suggested that the Court "grant to New York sovereignty over the original or 1833 Ellis Island to the low-water mark thereof." Report at 154.

The Special Master further determined that the most accurate depiction of the Island in 1834 was a map, prepared by the United States Coast Survey in 1857. Report at 157-158. The Master determined, based on testimony of New

York's witnesses, that the area above mean low water, based on that survey was 4.69 acres. Report at 160. To that acreage, the Master added some 0.2 acres, representing a portion of the pier that extended from the Island. The pier was in place in 1834. Over New Jersey's objection, the Master accepted New York's evidence that the pier was built on solid fill and should be included as part of New York's territory. Report at 158-159.

Although finding that the 1857 Survey was the best depiction of the Island at the time of the Compact, the Special Master nevertheless recommended that the Court not base its boundary on the clearly identified low water line which appears on that map. Instead, the Special Master found that considerations of practicality and convenience warrant the creation of a different, and in the Master's view, better boundary. A "template" approach, which involves placing the 1857 line on a current map of the Island, would be "overly literal" and unfair to New York. Report at 163.

The considerations offered for departure from the readily identifiable boundary line were as follows: buildings would be intersected by the boundary line, New York would be left with "thin strips" of New Jersey land between the Main Building and the ferry slip, New York would be "enclaved" by New Jersey on the Island and somehow the arrival of visitors to the Island by landing on New Jersey territory would cause "disruption." Report at 162-163.

The Special Master thus drew his own boundary, leaving the whole of the Main Building in New York, with adjacent land providing access to the ferry slip. The Special Master also determined to include the remains of Fort Gibson (built before the War of 1812) and the Railroad Ticket office behind the Main Building within New York, along with land facing out into the harbor. The Master's goal was to create a land area with acreage that was as close to 4.89 acres as possible. Survey A, which the Special Master chose as the basis of his

recommendation, actually added additional land to the New York section, for a total of 5.1 acres.

SUMMARY OF ARGUMENT

Although the Special Master correctly determined that New Jersey is sovereign over the underwater lands on its side of the boundary established in the 1834 Compact, and that New York has jurisdiction over only that portion of Ellis Island that existed in 1834, he mistakenly determined that New York's territory extends to the low water mark of the original Island. New Jersey takes exception to the latter decision, contending that the States' boundary should be drawn at the 1834 mean high water line. New Jersey's position is based on the language of Article II of the Compact, a reading of the Compact as a whole, past construction of the Compact, and the law of adverse possession. New Jersey also takes exception to the Special Master's conclusion that a portion of a pier extending from the Island in 1834 was built on fill and that New York should be given jurisdiction over that area. Nothing in the record supports the Special Master's finding with respect to the pier, nor justifies deviation from the mean high water line as the States' boundary.

In addition, New Jersey supports the Special Master's conclusion that the 1857 United States Coast Survey is the best available evidence of the size and shape of the 1834 Island. However, the Special Master erred in declining to use the 1857 Survey to draw the States' boundary. Thus, New Jersey takes exception to the Special Master's recommendation that the Court reshape the entire length of the boundary to address matters of practicality and convenience that he predicts will arise from acceptance of the line delineated in the Compact. The Special Master's concerns are not supported by evidence in the record, his recommended boundary does not comport with the terms of the Compact, which was approved by both States and Congress, and his

proposed remedy expands New York's jurisdiction to cover 5.1 acres, almost twice the amount of land to which it is entitled.

ARGUMENT

POINT I

NEW JERSEY IS SOVEREIGN OVER THE LANDFILLED PORTIONS OF ELLIS ISLAND ADDED BY THE FEDERAL GOVERNMENT, TO THE MEAN HIGH WATER LINE AS IT EXISTED WHEN THE COMPACT WAS ADOPTED.

A. The Special Master's recommendation is not supported by the Compact, relevant case law, or the record.

The Special Master correctly concluded that under Article II of the Compact, New York has jurisdiction only over Ellis Island as it existed at the time the Compact was adopted. The Special Master further concluded that the "Ellis Island" over which New York had jurisdiction included all lands down to the low water mark of the original Island, rather than to the mean high water line as New Jersey argued. New Jersey excepts to this finding and, for the reasons that follow, New Jersey's exception should be sustained.

To decide that New York's jurisdiction extended to the low water mark, the Special Master relied upon a fragment of the record of the unsuccessful negotiations of 1827 between New Jersey and New York which were an effort to resolve the dispute between the States over their boundary. The Special Master noted that during the negotiations of 1827, New Jersey at one point offered the following to New York: a boundary line down the middle of the Hudson River and Bay of New York; concurrent jurisdiction over the navigable waters established by such boundary line; and "the islands

called Bedlow's Island, Ellis' Island, Oyster Island and Robins Reef, *to the low water mark of same*, be held to be and remain within the exclusive jurisdiction of the state of New-York." Report at 72, (emphasis in Report) citing P280-P292. The Special Master reasoned on the basis of the offer and on caselaw that when the Compact was adopted by the States in 1834, the States most likely intended New York's jurisdiction over Ellis Island to extend to the low water mark.

The Special Master also invoked public convenience and practicality to determine the States' probable intent. The Special Master reasoned that it would have been extremely inconvenient to accord sovereignty to one State to the land to the high water mark or vegetation line, and to accord to the other State sovereignty on the land below the high water mark. He further reasoned that public convenience currently "counsels that New York should have access to the Harbor from her sovereign territory. Drawing the boundary at the MLW [mean low water mark] satisfies this concern." Report at 155.

B. Reliance by the Special Master on an offer rejected in 1827 was unsound, particularly where that evidence contradicts the plain language of the Compact and its overall design.

The Special Master's reliance on one pre-Compact offer of 1827 to decide what the States intended regarding New York's jurisdiction over Ellis Island is misplaced. The negotiations of 1827 were the second of three efforts by New Jersey and New York to resolve their differences over their boundary. The offer of 1827 that formed the basis of the Master's decision was, as he notes, rejected. The 1827 negotiations failed, New Jersey filed suit in this Court to resolve the dispute and another set of negotiations followed before the States agreed to the 1834 Compact. Under such circumstances, it is untenable to rely upon the exchange of

rejected negotiating points in 1827 as a basis for determining what the States intended when they agreed to the Compact some seven years later.

Certainly, far more significant is the fact that the Compact itself contains no reference to low water in Article II. Article II does not state that New York's jurisdiction on Ellis Island extends to low water, even though low water was mentioned during the 1827 negotiations and even though low water is explicitly referenced in Article III of the agreement. Indeed, as the 1827 negotiations and Article III of the Compact clearly indicate, in 1834, the States were familiar with the concepts of both the mean high water and the low water mark, but excluded any reference to low water from Article II. Given this exclusion, Article II should be interpreted in accordance with its plain meaning, not so as to include the omitted reference to low water. *Oklahoma v. New Mexico*, 501 U.S. 221, 245, 247 (1991)(Rehnquist, C.J., concurring and dissenting); *Carchman v. Nash*, 473 U.S. 716, 724-27 (1985); *Washington Metro. Area Transit Auth. v. Johnson*, 467 U.S. 925, 938 (1984); *Texas v. New Mexico*, 462 U.S. 554, 564 (1983)("Texas I").

The absence of any reference to low water in Article II further indicates that the States intended to limit New York's jurisdiction on Ellis Island to the land area above the mean high water mark. The relevant section of Article II refers not only to Ellis Island but also to other islands as well. This Court has held that an "island" is a body of land completely surrounded by water at high tide, not at low tide. *United States v. California*, 382 U.S. 448 (1966). This definition is consistent with Article 10 of the Law of the Sea, adopted at the United Nations Conference on the Law of the Sea held in 1958. Likewise, in *United States v. Alaska*, 65 U.S.L.W. 4457 (1997), this Court explicitly held that the Dinkum Sands formation was not an "island," because it was frequently below mean high water. Since the Compact makes specific reference to Ellis and other "islands," and since the Compact

does not extend New York's jurisdiction to the low water mark, the Compact should be interpreted in accordance with the general understanding of the term "island."

In addition, the Compact should be interpreted as a whole so that all its parts are harmonized. See *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 509 (1986); *Carchman*, *supra*, 473 U.S. at 724-26; *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249-54 (1985). Interpreting Article II to extend New York's jurisdiction to the low water mark around the original Ellis Island would be contrary to the overall design of the Compact. As this Court determined in *Central R.R. Co. v. Mayor of Jersey City*, *supra*, the dominant purpose of the Compact is to draw a boundary line between the States and make New Jersey sovereign over all of the lands under water on the New Jersey side of the boundary line. Article III (1) provides that New Jersey "shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York" Report at 5a. Justice Holmes stated for the Court in *Central R.R. Co.* that the "right of property in the compact between the states is to be taken primarily to refer to ultimate sovereign rights, in pursuance of the settlement of the territorial limits." 209 U.S. at 478.

When the Compact was adopted, the term "lands under water" was understood to include all tidally-flowed lands, up to the mean high water mark. Thus, "lands under water" include both lands that are always under water and lands that are under water at high tide, but uncovered at low tide. See *Pollard v. Hagan*, 44 U.S. (3 How.) 212, 220 (1845); *Martin v. Waddell's Lessee*, 41 U.S. (16 Pet.) 367, 410 (1842); *Mobile v. Hallett*, 41 U.S. (16 Pet.) 261, 265 (1842); *Arnold v. Mundy*, 6 N.J.L. 1, 76-78 (N.J. 1821). Cf. *Alabama v. Georgia*, 64 U.S. 505, 515 (1859) (holding that the riverbed encompassed both lands always under water, and lands sometimes under water). The Compact must be interpreted in light of the common understanding of the term "lands under

water" that existed in 1834. *Texas v. New Mexico*, 482 U.S. 124, 128-29 (1987)(*Texas II*); *Corbin on Contracts*, §551 (Rev. ed. 1993).

Thus, under Article I, New Jersey is sovereign over the lands under water around the original Island, up to the high water mark. Since Article II does not explicitly extend New York's jurisdiction to the low water mark around Ellis Island as it existed in 1834, there is no limitation on New Jersey's sovereignty over the under water lands to the high water line around the Island, based on the generally held understanding at the time the Compact was made of the meaning of the term "lands under water."

That this is so is further evidenced by reference to Article III of the Compact which provides that New York shall have extra-territorial jurisdiction over the lands "covered" by water "to the low water-mark on the westerly or New Jersey side thereof." Report at 4a. The reference to the low water mark within Article III shows the States' shared understanding that the term "land under water" extends to the mean high water mark. Without the reference to low water in Article III, New York's jurisdiction would have extended to the high water mark of the New Jersey shoreline. The absence of any reference to low water in Article II makes abundantly clear that the States intended to strictly limit New York's jurisdiction on Ellis Island to the Island above mean high water.

C. New Jersey's 1829 complaint is more persuasive evidence regarding the intent underlying the 1834 Compact.

Rather than look to a fragment of the history of the 1827 negotiations between the States, the Special Master should have accorded significant weight to the Complaint filed by New Jersey in this Court in 1829 seeking resolution of its boundary dispute with New York. In that action, New Jersey

contested New York's claim to the whole of the Hudson River and the dividing waters between the States and controverted New York's claim that it had exercised jurisdiction over the whole of those waters. New Jersey said that New York's jurisdiction had only been exercised on certain islands, not the waterways. In its Complaint, New Jersey stated that New York "became wrongfully possessed of Staten island and the other small islands in the dividing waters between the two states . . . [which] had been since acquiesced in . . . New York has no other pretense of title to said islands but adverse possession; that, as such possession has been uniformly confined in its exercise to the fast land thereof" See Report at 7, citing *In re Devoe Mfg. Co.*, 108 U.S. 401, 407 (1883). Thus, New Jersey asserted that New York had no claim to Ellis Island other than a claim of adverse possession and that New York's adverse possession had been confined to the "fast land" of Ellis Island.¹⁷

New Jersey's Complaint of 1829 represented its formal position before the Compact was adopted. It should be given much stronger weight than an earlier offer which was made during unsuccessful negotiations and rejected seven years before the Compact was adopted. Under basic principles of contract law, that rejected offer did not thereafter become part of the agreement between the States. *Corbin, supra*, Vol. I, ¶3.41.

The reference to "fast land" in New Jersey's Complaint further supports limiting New York's jurisdiction on Ellis Island to the mean high water mark. "Fast land" is vegetated land and does not include under water land that is tidally-flowed such as land below the high water mark. See *United*

¹⁷ New Jersey's pleadings in *Devoe* did not constitute a concession by New Jersey that New York had acquired sovereignty over Ellis Island, as stated by the Special Master. Report at 7. New Jersey merely characterized New York's only possible claim to the Island as one grounded on allegations of adverse possession.

States v. Willow River Power Co., 324 U.S. 499, 509 (1945); *Scranton v. Wheeler*, 179 U.S. 141, 163 (1900); *Shively v. Bowlby*, 152 U.S. 1, 17, 57-58 (1894); *Hill v. United States*, 149 U.S. 593, 595 n.3 (1893); *In re Sutter*, 69 U.S. (2 Wall.) 562, 586 (1864); *Jones v. Soulard*, 65 U.S. (24 How.) 41 (1860); *Ward Sand & Materials Co. v. Palmer*, 237 A.2d 619 (N.J.1968); *Harz v. Board of Navigation and Commerce*, 7 A.2d 803, 897 (1939), *aff'd*, 12 A.2d 879 (N.J. 1940).

Moreover, a claim of adverse possession extends only to land that is actually occupied, and cannot extend to land that is unoccupied and rightfully held by someone else. See *Marine Ry. & Coal Co. v. United States*, 257 U.S. 47 (1921); *Hunnicut v. Peyton*, 102 U.S. 333 (1880). Before the Compact was adopted, New Jersey did not agree that New York's "present jurisdiction" extended to low water, but instead asserted that it had been confined to the "fast land" above high water. Moreover, at that time, the fast land that now lies between the mean high and low water marks of 1834 did not exist and therefore could not have been previously obtained by adverse possession. Accordingly, Article II settled the question of which State would exercise jurisdiction over the "fast land" of Ellis Island, but did not encompass the tidally-flowed lands below the mean high water line which subsequently were filled by the United States.

D. Practical construction of the Compact since 1834 supports New Jersey's interpretation.

New Jersey's interpretation of Article II also is supported by the practical construction of the Compact that occurred after 1834. As the Special Master concluded, the landfilling conducted by the United States after 1890 was an avulsive change that did not alter the boundary set in 1834. Report at 97-99. However, that landfilling included the filling of lands between the mean high water mark of 1834 and the mean low water mark. Starting in 1892, New Jersey insisted that the

United States secure a deed to the lands under water which were being filled. P383(a), P405, P1 at 11.

In 1904, the United States acquiesced in New Jersey's demands. United States Attorney General Moody wrote to New Jersey's Board of Riparian Commissioners and recognized that New York's ownership and jurisdiction was limited to Ellis Island "proper." The federal government secured a deed from New Jersey for the underwater lands, and had the deed recorded in New Jersey. That deed included the area between mean high water and mean low water. P4, P5, P7, P339-P341, P351; T695-15 to T706-41; and Appendix at D at 9a.

Previously, by 1808, New York conveyed title and jurisdiction over Ellis Island to the United States. The deed provided for the transfer of the land above mean high water. T326-1 to T327-3 and T2943-19 to -23; *see also* Appendix B at 2a. In 1880, New York purported to convey to the United States certain lands covered by water around Ellis Island. *See* Appendix H at 25a. In 1904, Attorney General Moody explicitly determined that the 1880 deed and cession of jurisdiction was of no force and effect. He stated that although there was no question of New York's ability to transfer the original Island and jurisdiction to the United States, under the Compact, New Jersey owned the lands under water around "Ellis Island proper." *See* Report at 125-26 and 152; *see also* Appendix C at 6a.

The Special Master correctly concluded that the 1904 conveyance by New Jersey was a sovereign act. *See* Report at 124-125. His finding that in 1834 the States most likely intended New York's sovereignty to extend to low water is completely inconsistent with his conclusion regarding the 1904 conveyance as well as inconsistent with the prior acts of New York in its conveyance and cession of jurisdiction over Ellis Island to the high water mark by 1808. Despite its attempted conveyance of 1880 of submerged lands around

Ellis Island, New York did not object to New Jersey's actions in 1904, or to the recording of the deed in New Jersey. New York indicated by its silent acquiescence to the 1904 conveyance that New Jersey was owner of the lands below mean high water and, as this Court determined in *Central R.R. Co.*, ownership of those lands was indicative of "ultimate sovereign rights." Thus, the conduct of both States and the United States in 1904 demonstrates an understanding that New Jersey's territory and sovereignty extended to the mean high water mark around the original Island. This practical construction of the Compact must be accorded significant weight. *Vermont v. New Hampshire*, 289 U.S. 593 (1933); *Michigan v. Wisconsin*, 270 U.S. 295, 307 (1926); *Louisiana v. Mississippi*, 202 U.S. 1, 57 (1906).

E. Unsubstantiated practical concerns do not justify extending New York's jurisdiction to the low water mark.

In determining that the States probably intended New York's jurisdiction over Ellis Island to extend to the low water mark, the Special Master also invoked public convenience and practicality. The Special Master concluded that it would have been extremely inconvenient to limit New York's jurisdiction to the high water mark when the Compact was adopted, and that it also would be inconvenient to do so today, as this limitation would require New York to pass through New Jersey territory to reach New York Harbor from the Main Building on New York's territory. Report at 155.

New Jersey takes exception to this approach. First, practical concerns about a boundary on Ellis Island today hardly provides insight into the probable intention of the States in 1834. Second, the Master wrongly suggested that it would have been "extremely inconvenient" to limit New York's jurisdiction in 1834 to the Island at the high water line. He posits a practical concern that the original Island

would have been "enclaved" by a ring of land between the high water mark and low water. This concern is simply unfounded.

In 1834, when the boundary was drawn, Ellis Island was owned by the federal government and operated as a military installation. New York previously had ceded its jurisdiction over the Island to the federal government. No genuine practical difficulty could arise if New York's jurisdiction was limited to the land above mean high water because New York's jurisdiction was virtually non-existent and retention by New Jersey of sovereignty over the submerged lands around the Island would not impede the operation of the federal facility. Indeed this was apparently the view of Congress when the United States consented to the Compact of 1834. That consent carried with it the *proviso* that nothing in the agreement "shall be construed to impair or in any manner effect, any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement." Report at 8a.

Furthermore, the States fully understood that Ellis Island would be on the New Jersey side of the newly created boundary, completely surrounded by New Jersey waters. The States recognized that the Island would be and remain "enclaved" by New Jersey territory. The States knew that it would always be necessary to pass through New Jersey territory to reach Ellis Island. The States apparently did not believe that this arrangement would give rise to impracticalities. Even if such practical concerns did arise, and there is no evidence whatsoever to that effect, any perceived impracticality is a function of the Compact adopted by the parties. This Court should not attempt to rewrite that agreement by ordering relief that is not consistent with the Compact. *Texas II, supra*, 482 U.S. at 124; *Texas I, supra*, 462 U.S. at 564; *Arizona v. California*, 373 U.S. 546, 565 (1963).

In support of his conclusion that New York's jurisdiction extends to low water, the Special Master cited *Handly's Lessee v. Anthony*, 18 U.S. (5 Wheat.) 374 (1820). But *Handly's Lessee* does not support the Master's conclusion. In *Handly's Lessee*, the Court invoked public convenience and concluded that as a general rule, a sovereign bounded by a river holds to low water, not high water. However, under the Compact New Jersey is not bounded by the shore of the Hudson River and New York Bay, but is bounded by the middle of the Hudson River and the Bay. All of Ellis Island lies within New Jersey's boundary, and therefore Ellis Island constitutes a narrow exception to the boundary. Public convenience and practicality do not require this exception to be broadened beyond the plain language of Article II, in a manner that is inconsistent with Articles I and III, and with the practical construction of the Compact since 1834.

In sum, the Special Master mistakenly based his decision concerning the low water mark on one small portion of the pre-Compact negotiations of 1827, inapplicable legal precedent and on unfounded practical concerns. The plain language of Article II, the Compact as a whole and better evidence of New Jersey's position pre-dating the Compact, notably New Jersey's Complaint filed in 1829, show that New York's jurisdiction on Ellis Island extends only to the high water mark of the original Island.

POINT II

THE SPECIAL MASTER ERRED IN MODIFYING THE BOUNDARY TO ADDRESS CONSIDERATIONS OF PRACTICALITY AND CONVENIENCE, NO EVIDENCE OF WHICH APPEARS IN THE RECORD. THUS, THE COURT SHOULD DECLINE TO REDESIGN THE BOUNDARY ESTABLISHED IN THE 1834 COMPACT APPROVED BY BOTH STATES AND CONGRESS.

The Special Master correctly concluded that the boundary between the States on Ellis Island was determined by the 1834 Compact executed by both States, with the consent of Congress. Report at 89. However, the Special Master's recommendation that the Court modify the boundary defined in the Compact in order to alleviate perceived practical considerations should not be accepted by the Court. The record contains no evidence to support the Special Master's speculation that application of the boundary established in the Compact would result in practical difficulties or inconveniences for the States. Therefore, departure from the boundary delineated on the 1857 United States Coast Survey, which the Special Master found to be the best evidence in the record to determine the size and location of Ellis Island as it existed in 1834, is unwarranted.

The record contains extensive evidence supporting the Special Master's determination that the 1857 Survey is an accurate depiction of Ellis Island as it existed at the time of the Compact. As noted by the Special Master, the Survey was the work of the United States Coast Survey, a governmental agency whose "mapmakers are presumptively careful and reliable." Report at 157; *see also Borax Consol., Ltd. v. Los Angeles*, 296 U.S. 10 (1935). In fact, in 1857 the agency gathered tidal data within New York Harbor and incorporated that data in its surveys in accordance with a 40-step procedure. Based on these procedures, the work of the

Coast Survey is regarded as highly accurate and sophisticated for its day. Aaron L. Shalowitz, *Shore and Sea Boundaries* (U.S. Government Printing Office, 1964) at 79; T812-16 to T814-21. New York's experts, Drs. Squires and Swanson, did not refute these facts, instead generally concurring that the United States Coast Survey used the best methodology available to its employees. See T3430-24 to T3431-20.

In addition, the Survey was prepared specifically to depict only Ellis, Liberty, and Governor's Island, rather than a greater portion of New York Harbor. Thus, as the Special Master found, the Survey "does not sacrifice accuracy for breadth." Report at 157. An enlargement of the Survey in the record shows the northeastern seawall of Liberty Island in the same location as it appears on a 1980 photomap of the Island that meets national accuracy standards, providing an accurate control point on the Survey. *Id.* Furthermore, the Special Master concluded that the location of two points on the Fort Gibson wall as they appear on the 1857 Survey match precisely with the location of those points on both the 1980 photomap and a 1995 survey of the Island accepted by New York as accurate. *Id.*

Moreover, New York's experts did not offer an alternative to the 1857 Survey. Report at 156. Although New York at one point indicated a preference for an 1837 map of the Island, the Special Master correctly concluded that that map "is simply not as detailed as the 1857 map" and "its accuracy is not buttressed by the 1980 [photo]map and 1995 survey."¹⁸ Report at 158. Nor did New York convince the

¹⁸ The various estimates offered by New York's experts regarding the size of Ellis Island to mean high water and mean low water as depicted on various maps are unreliable. The estimates, which appear at page 160 of the Report, were compiled by an individual identified by New York's experts as Sander Prisloe. T2940. New York's experts confessed a lack of knowledge concerning the accuracy of the equipment used by Mr. Prisloe, the methods he undertook, and whether his calculations were verified. In

Special Master that fill was added to Ellis Island in the period between 1834, when the boundary was established, and 1857, when the Survey was created. Thus, nothing in the record suggests that the Island's shape changed during that time. *Id.*

In light of New Jersey's strong evidence concerning the 1857 Survey, and New York's failure to rebut that evidence or to offer an alternative map, the Special Master was correct to conclude that the 1857 Survey is the best available depiction of Ellis Island in 1834. This Court has always used historical maps to determine interstate boundaries and has never declined to do so simply because such maps may not be as accurate as current maps. *See, e.g., Minnesota v. Wisconsin*, 252 U.S. 273, 278-79 (1920). Indeed, since this Court consistently has held that interstate boundaries must be determined on the basis of the conditions that existed at the time the boundaries were set, an available historical map must be selected to determine the boundaries of Ellis Island in 1834. *See, e.g., Illinois v. Kentucky*, 500 U.S. 380 (1991); *Ohio v. Kentucky*, 444 U.S. 335 (1980). New Jersey clearly has shown that the 1857 Survey is the most accurate and appropriate map to use.

Despite his findings concerning the accuracy of the 1857 Survey, the Special Master inconsistently rejects what he correctly terms "[t]he most obvious way to determine the shape and configuration of New York's sovereign territory": the placement of transparencies of the 1857 Survey and the 1980 photomap over the 1995 survey of the Island. Report at 162. By lining up control points on those documents such as the seawall on Liberty Island and the remaining Fort Gibson wall, the boundary of the original Island can be placed with precision on the 1995 survey. Delineation of the States'

fact, Dr. Swanson admitted that he was not even present for a portion of the time during which Mr. Prisloe worked and that many of Mr. Prisloe's calculations were discarded without being recorded. T3041-42. Mr. Prisloe was not offered as a witness by New York, having not been qualified as an expert in this action.

boundary in this fashion would be most effective and accurate. The Special Master, however, declines to adopt this simple, direct, and most accurate approach.

Instead, he attempts to address "impracticalities and inconveniences" that he speculates may result from adoption of the boundary defined in the 1834 Compact, even though there is no evidence in the record concerning any such difficulties. *Id.* For example, the Special Master accurately notes that the boundary depicted on the 1857 Survey would intersect a few buildings and would place a strip of New Jersey territory between the ferry landing slip and New York land under the Main Building. The Special Master claims that this "overly literal" approach would enclave New York and leave that State without access to or authority over land adjacent to its territory. *Id.* He also found that the boundary line established in the Compact would be "haphazard and uneven" and speculates that such a line might result in difficulties when applying workers' compensation and historic preservation laws on the Island. *Id.*

In order to alleviate these practical obstacles, the Special Master recommends alteration of the boundary established in the Compact and creation of an entirely new division of jurisdiction between the States on the Island. The Special Master's new boundary respects buildings presently existing on the Island, rather than the provisions of the 1834 Compact agreed to by the States and ratified by Congress. Under the Special Master's proposed remedy, New York's territory does not in any way resemble Ellis Island as depicted on the 1857 Survey. Instead, New York's portion of the Island will "roughly be a rectangle encompassing all of the Main Building . . . all of the land to the ferry slip directly in front of the Building, and the entire triangle-shaped area on the southeast side of Island Number One." Report at 166.

The practical concerns raised by the Special Master are not supported by evidence in the record. The Special

Master's fear that the boundary established in the Compact would leave New York without access to land over which it has jurisdiction and thus result in impracticalities and inconveniences is without foundation. Even under New York's theory of this case, Ellis Island is surrounded by New Jersey waters. Regardless of the extent of New York's jurisdiction on the Island, to get from New York's mainland to Ellis Island it is necessary first to travel through waters in New Jersey territory. This state of affairs has been present since 1834 without a single recorded instance of New Jersey's interference with the exercise of New York's "present jurisdiction." New York presented no witness, no document and no other evidence suggesting that New Jersey's exercise of its sovereignty over land located in front of the Main Building would in some way interfere with the exercise of New York's limited jurisdiction on the Island.

In addition, nothing in the record indicates that the boundary established in the Compact will be any more or less difficult to administer than the redesigned boundary drafted by the Special Master. Modern technology allows for the delineation of the boundary established in the Compact. Once set, the boundary will remain fixed and its contours will be known to the federal officials operating the various facilities on the Island. The fact that the line might be irregular does not mean that it will be difficult to identify with precision.

Moreover, nothing in the record suggests that preservation of the historic structures on the Island will be adversely affected by the boundary established in the Compact. The Main Building has already been preserved by the National Park Service, which consulted with both New York and New Jersey as required by federal law. See 16 U.S.C. §470a(b) (3)(1995); 36 C.F.R. §§800.1(c)(1)(i)(ii). The record contains no indication that this dual consultation caused any administrative difficulty or frustration of the goals of preservationists. Nor is there any evidentiary support for the proposition that New Jersey is any less interested in

preserving the historic buildings within its sovereign territory than is New York. Moreover, as noted by the Special Master, to the extent that New Jersey's preservation laws differ from those of New York, with which the preservationist *amici* presumably are more familiar, *amici* simply "must be more creative in asserting their members' interests under [New Jersey's] laws." Report at 164, n.67.

Importantly, in the *Collins* case, the National Park Service, which presently controls Ellis Island, took the position that split jurisdiction existed on the Island. The Park Service has never expressed any concern that split jurisdiction would interfere with its operations or its ability to access the Island. The federal government did not retreat from that position in this case and has expressed no concern with the prospect of dual jurisdiction.

Reconfiguration of an entire interstate boundary to address unproven and undefined practical difficulties and inconveniences contradicts this Court's historic allegiance to application of the exact contours of boundaries approved by States and ratified by Congress, regardless of unintended inconveniences and impracticalities that might result.

For example, in *Ohio, supra*, this Court adopted as the boundary between Ohio and Kentucky the low water mark on the north side of the Ohio River, as it existed in 1792. The Court was not discouraged from adoption of that line by either the difficulty of establishing the 1792 low water mark nor the potential inconveniences that might result from that boundary. The Court noted that difficulties in establishing the location of an old boundary "have not dissuaded the Court from concluding that locations specified many decades ago are proper and definitive boundaries." 444 U.S. at 340. Nor was the Court concerned that application of the boundary might result in the inconvenient circumstance of having a portion of one State on the "wrong" side of the river. *Id.*

A similar approach was taken in *Illinois, supra*, in which this Court found the boundary between those States also to be the low water mark of the Ohio River as it existed in 1792. Writing for the majority, Justice Souter noted that after application of the 1792 low water boundary, 15 structures extended into or over Kentucky's territory from the Illinois shoreline. 500 U.S. at 387. Apparently, the Court was satisfied that delineation of the proper boundary between the two States was of paramount concern, and any impracticalities or inconveniences resulting from the boundary would be left to the States to resolve. The same course should be followed in this instance.

Furthermore, this Court continuously has recognized that an interstate Compact must be enforced as written, and that any potential difficulties can and should be addressed by the States. See *Vermont v. New York*, 417 U.S. 270 (1974); *Wyoming v. Colorado*, 298 U.S. 573, 586 (1936). Indeed, as the Special Master recognized, "neither the Court nor its Special Master can draw boundaries that do not respect the boundaries set by the States themselves with congressional approval. Under principles of separation of powers, the congressional expression of state sovereign[ty] will control." Report at 150. Adherence to these principles requires the Court to interpret the Compact and define the boundary as determined by the States and Congress.

Additionally, acceptance of the Special Master's recommendation undoubtedly would invite claims in every boundary dispute before this Court concerning practical obstacles and inconveniences resulting from application of established boundaries. Requests for alteration of boundaries to address these problems, whether real or perceived, would necessitate the production of extended testimony and evidence concerning the practical application of interstate boundaries. This Court is not the proper forum for resolution of States' desires to change the terms of an interstate Compact. The 1834 Compact was negotiated by the States and ratified by

Congress. If the boundary created by the Compact proves to be inconvenient or impractical, then it is up to the States to address those issues between themselves, with the approval of Congress.¹⁹

POINT III

THE RECORD CONTAINS NO CREDIBLE EVIDENCE TO SUPPORT THE SPECIAL MASTER'S CONCLUSION THAT THE PIER ON ELLIS ISLAND IN 1834 WAS PARTIALLY BUILT ON LANDFILL.

The Special Master's finding that the pier on Ellis Island in 1834 was partially constructed on landfill is based entirely upon the speculative claims of New York's witness, Dr. Squires. Those claims are unsupported by evidence in the record and do not provide the basis necessary to deviate from the mean high water line depicted on the 1857 Survey.

The Special Master cites two bases for his conclusion that a portion of the 1834 pier was constructed on fill: (1) that the 1819 map of Ellis Island shows what the Special Master interprets as a filled area around a portion of the pier; and (2) Dr. Squires' speculation that the pier was used to carry ammunition by rail car, along with his guess that such ammunition would be heavy enough to require a pier built on

¹⁹ Notably, the Decree proposed by the Special Master is internally inconsistent. Paragraph 1 of the Decree states that New Jersey is declared sovereign over the landfilled portions of Ellis Island and that New York is enjoined from enforcing its laws or asserting sovereignty over that land. In addition, paragraph 2 of the proposed Decree recommends that the boundary between the States be established as set forth in the 1834 Compact. Report at 169-70. However, paragraph 3 of the proposed Decree recommends that the boundary be established as set forth in the designated survey, a recommendation that would make New York sovereign over significant landfilled portions of the Island, contrary to the prior findings of the Special Master and the provisions of the Compact. Supp. Report at 16-18.

landfill. Report at 158-159. The record does not contain evidence to support either of those conclusions.

None of the maps in evidence contain conclusive evidence of filling on Ellis Island prior to 1834. Thus, the conclusion by the Special Master that even a portion of the 1834 pier was constructed on fill is based upon speculation. While the 1819 map shows some accretion in the area of the pier, that accretion is not necessarily evidence of fill.²⁰ It is undisputed that in 1819, pilings placed under a pier built over open tidal waters were capable of trapping sediment and creating accretion in the area of the pier. T282-11 to -25; T299-4 to -7; T3020-20 to T3021-4; T3061-12 to T3062-5; P382(e); P382(g). Therefore, the evidence shows that it is possible that the pier was built on pilings. T3026-22 to T3027-10. In fact, New York's expert, Dr. Squires, admitted that in 1819 at least a portion of the pier then existing on Ellis Island could have been built on a dense field of pilings and not on landfill and accounted for the apparent areas of accretion on the 1819 map. T2928-19 to T2929-20; T3023-20 to -24; T3061-12 to T3062-5; P382(e). Furthermore, the size and shape of the pier changed from time to time in the period from 1819 to 1857, suggesting that the pier had been built on pilings and not fill. T297-3 to T298-19; T313-3 to -8; T338-23 to T339-16; T3046-7 to -20; T3053-24 to T3054-3; T3059-24 to T3060-2; P382(g); P382(f); P382(h1); P382(j).

Secondly, Dr. Squires' testimony that the 1834 pier was used to transport ammunition on rail cars and that the weight

²⁰ Although the Special Master refers to an 1839 chart as one of the bases for his conclusion that the 1834 pier was partially constructed on fill, Report at 158-59, the record does not contain such a chart. It appears that the Special Master intended to refer to the 1819 map of the Island, about which both States offered testimony concerning the question of whether the 1834 pier was built on fill. The 1819 map is the only map in evidence from the period prior to 1834 that shows what may be accretion near the pier. T282-11 to -25.

of such cargo would necessarily have required that the pier be built on fill is entirely unsupported by evidence. Nowhere in the record does there appear any convincing evidence with respect to the uses of the 1834 pier. Nor does the record contain proof regarding the weight of ammunition and carts used on the Island at that time. New York has failed to establish by a preponderance of evidence these facts, which may not, therefore, serve as the basis for the conclusion that a portion of the 1834 pier was constructed on fill.

Moreover, the precise calculation needed to determine whether a pier supported by piles could support a particular weight is outside of the field of expertise for which Dr. Squires was qualified. He is not an engineer and expressly admitted at trial that he lacked expertise sufficient to determine what engineering techniques are necessary to support a certain amount of weight on a pier. When asked if he could make such a calculation, he stated, "I would not make that determination myself. I'm not a licensed engineer." T2831-18 to T2832-25. Thus, his testimony concerning the purported need to build the 1834 pier on fill falls outside of his limited expertise and is wholly insufficient to support the Special Master's finding concerning the pier's construction.²¹

²¹ Even if this Court were to adopt the Special Master's conclusion that a portion of the 1834 pier was built on fill and should be included within the high water line of the 1834 Island, the Special Master incorrectly double counted the 1834 pier when determining the land area over which New York has jurisdiction. The Special Master estimates the area to the low water mark on the 1857 Survey to be 4.69 acres, adopting an estimate reached by New York's two experts. Report at 160. The Special Master subsequently adds 0.2 acres to account for one-half of the 1834 pier which he found to have been constructed on fill. Report at 161. New York's area was thus expanded to 4.89 acres. However, the 4.69 acre estimate proffered by New York's experts already included the portion of the pier New York contends was built on fill. T3061-6 to 3052-8. Thus, the addition of 0.2 acres to New York's estimate of the Island to mean low water was duplicative and resulted in an unjustified expansion of New York's area of jurisdiction.

CONCLUSION

For the reasons stated herein, New Jersey respectfully submits that the Court should determine that New York's jurisdiction on Ellis Island is limited to the portions of the Island above the mean high water line in 1834. Additionally, the Court should employ a "template" approach and declare the boundary between New Jersey and New York on Ellis Island to be the line of mean high water as depicted on the United States Coast Survey of 1857, and not include the pier existing on the Island in 1834.

Respectfully submitted,

PETER VERNIERO

Attorney General of New Jersey

JOSEPH L. YANNOTTI

*Assistant Attorney General
Counsel of Record*

ROBERT A. MARSHALL

PATRICK DeALMEIDA

RACHEL HOROWITZ

*Deputy Attorneys General
On the Brief*

R.J. Hughes Justice Complex

P.O. Box 112

Trenton, New Jersey 08625-0112

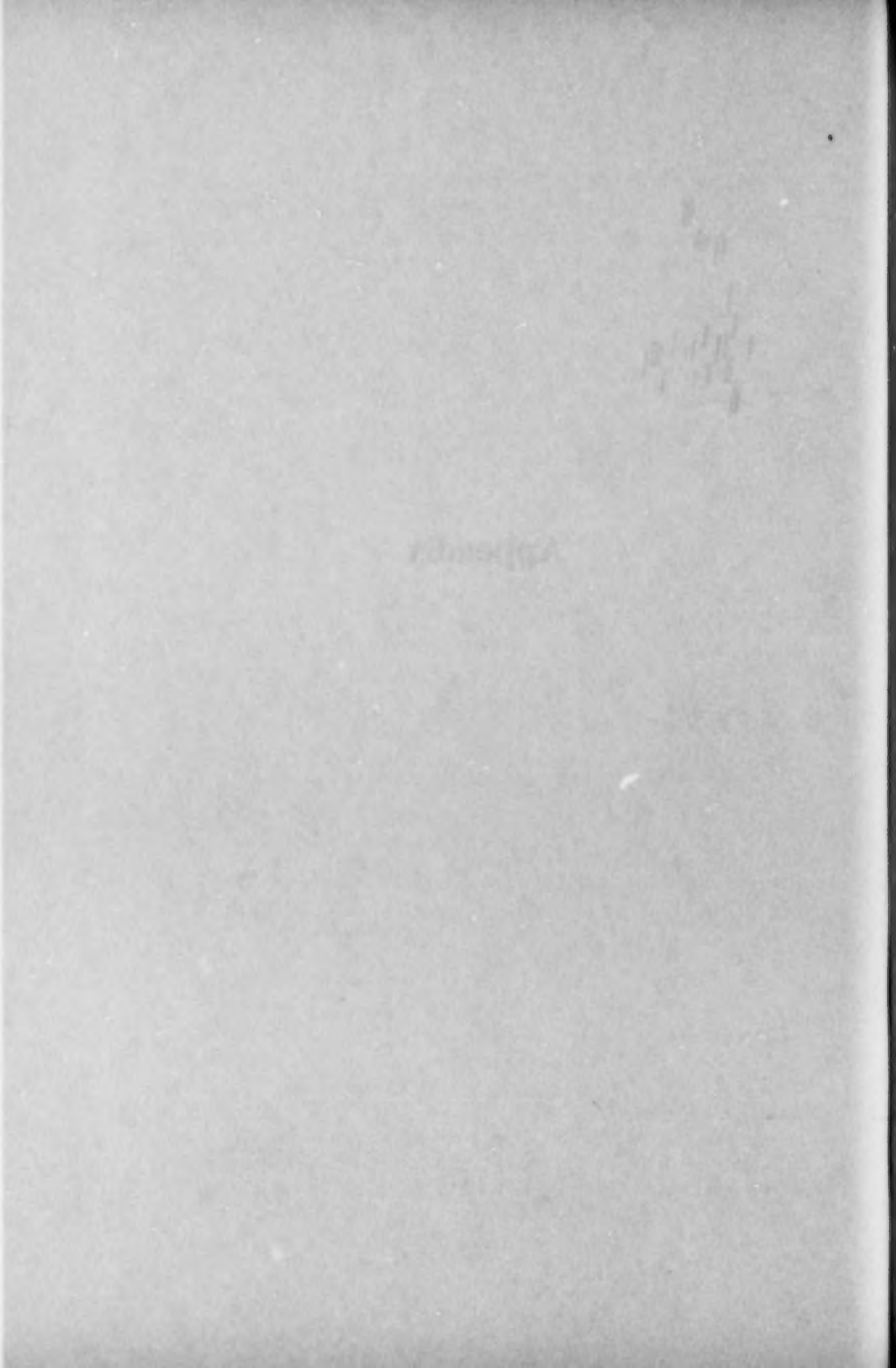
(609) 292-8567

Dated: July 31, 1997

Moreover, after the Special Master's reconfiguration of the boundary, the land over which New York has jurisdiction expands to 5.1 acres, almost twice the 2.74 acres depicted as within the mean high water line on the 1857 Survey.



Appendix



APPENDIX A

[Cession of jurisdiction over Ellis Island, bounded by waters of the Hudson River, by the State of New York to the United States of America, 1800.]

Act of February 15, 1800, c. 6 (Laws N.Y., 1797-1800, p. 454), entitled "An act to cede to the United States the jurisdiction of certain islands situate in and about the harbour of New York.":

Be it enacted by the People of the State of New York represented in Senate and Assembly, That the following islands, in and about the harbour of New York, and in and about the fortifying of which, this State hath heretofore expended or caused to be expended large sums of money, to wit, all that certain island called Bedlow's island, bounded on all sides by the waters of the Hudson River; all that certain island, called Oyster island, bounded on all sides by the waters of the Hudson river; and all that certain island called Governors island, on which Fort Jay is situate, bounded on all sides by the waters of the East river and Hudson river, shall hereafter be subject to the jurisdiction of the United States: Provided, that this cession shall not extend to prevent the execution of any process, civil or criminal, issuing under the authority of this State, but that such process may be served and executed on the said islands respectively, anything herein contained notwithstanding.

APPENDIX B

[Conveyance of title to Ellis Island to ordinary high water mark, by the State of New York to the United States of America, 1808.]

By Daniel D. Tompkins,
Governor of the State of New York.

WHEREAS by an Act of the Legislature of the State of New York entitled "An Act supplementary to an Act entitled 'an Act to cede the jurisdiction of certain land in this State to the United States', passed March 20th, 1807," it was in substance enacted and provided among other things that it should be lawful for the person administering the Government of this State to enter into and upon the lands called Ellis's or Oyster Island and to lay out and survey the same and having made such survey to contract and agree with the owner or owners of the said Island for the whole or for so much of the same and for any tenements therein being as the President of the United States should judge requisite for fortifications and to purchase the same in the name and behalf of the people of the State of New York but that if he could not agree with the owner or owners thereof respectively or in case the owner or owners thereof should be under age *non compos mentis* or out of the State that then it should be lawful for the person administering the Government of the said state to apply to the Chancellor thereof who upon such application was by the said act required to issue a writ or writs in nature of a writ *ad quod damnum* to be directed to the Sheriff of the City and County of New York commanding him to execute the same in the manner therein directed and required and that if upon the return of the said writ and upon an examination thereof by the Chancellor it should appear to have been duly executed then the said Chancellor was required to enter judgment that the people of this State (the person administering the Government first causing to be paid into the said Court the sum or sums of money assessed in the inquisition to be taken and made under and by virtue of the said writ over and

besides the costs) should be entitled to hold all and every the said tenements together with the rights and appurtenances in the said inquisition described as fully and effectually as if the same had been granted by the owner or owners thereof and that upon the title to the said land and tenements being vested in the people of the State of New York, as aforesaid, the person administering the Government of the said State was by the said act required and empowered to convey and grant all the right, title and interest of the said State to the United States for the purposes in the said Act expressed provided that the sum or sums so assessed and the costs were paid to the order of the person administering the Government of the said in part recited act reference being thereunto had may more fully and particularly appear.

And whereas under and pursuant to the said Act Daniel D. Tompkins the person administering the Government of the State of New York did enter upon the said lands called Ellis's or Oyster Island and cause such survey thereof to be made as by the said Act is required and afterwards to wit under the eighteenth day of April last did represent to the Honorable John Lansing Junior Chancellor of the State of New York that the President of the United States judged the whole of the said Island and the tenements thereon requisite for fortifications that he had caused such survey thereof as aforesaid to be made and that he could not contract or agree with the owner or owners of the said Island inasmuch as some of the said owners were under age others were out of the state and because there were adverse and conflicting claims to the said Island as by the said representation on file in the office of the Register of the said Court of Chancery reference being thereunto had will more particularly appear; and whereas such proceedings were thereupon afterwards had in the said Court of Chancery under and pursuant to the before in part recited Act that on the 18th day of June in the year one thousand eight hundred and eight (the person administering the Government of the State of New York having first paid into the said Court the sum of ten thousand dollars being the sum

of money assessed in the inquisition taken and made pursuant to the aforesaid Act over and besides the costs accrued in the premises) it was ordered, adjudged and decreed in and by the said Court of Chancery of the State of New York that the people of the said State should from thenceforth and forever thereafter have and hold the said lands and tenements with their appurtenances in the inquisition taken in the premises pursuant to the aforesaid act described that is to say the lands commonly known and called by the name of Ellis's or Oyster Island situate in the Bay of New York, surrounded on all sides by the said Bay which Island contains by estimation to ordinary high water mark two acres three rood and thirty-five perches as fully and effectually as if all the right, title and interest of the owner or owners thereof in and to the same had been granted by him, her or the to the people of the said State of New York as by the record of the proceedings, orders, judgments and decrees of the said Court of Chancery in the premises reference being therein had may more fully and particularly appear.

NOW BE IT KNOWN to all those to whom these presents shall come that the said sum of Ten Thousand Dollars in the inquisition aforesaid assessed and the costs in the premises amounting to one hundred and eighty three dollars and ten cents having been paid to my order by and on behalf of the United States pursuant to the before in part recited Act I Daniel D. Tompkins being the person administering the Government of the State of New York do by these presents in pursuance of the requisition and power mentioned in the said Act and in consideration of the premises aforesaid convey and grant all the right, title and interest of the State of New York in and to the lands, tenements and appurtenances above mentioned and described to the United States *to have and to hold the same for the purposes mentioned and expressed in the said above in part recited act.*

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the privy seal of the State of New York

5a

at the City of New York the thirtieth day of June in the year of our Lord one thousand eight hundred and eight and in the thirty-second year of the Independence of the United States.

SEAL.

Daniel D. Tompkins,

I approve of the form of the preceding conveyance. New York, 1st July, 1808.

Nathan Sanford, Atty. U.S.A.

APPENDIX C

[Correspondence for the purchase of under water lands, William H. Moody, Attorney General of the United States of America, to the New Jersey Board of Riparian Commissioners, 1904.]

DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

July 15, 1904

The Riparian Commission of New Jersey
Commercial Trust Building
Jersey City, N.J.

Sirs:

I have the honor to apply for a grant to the United States of such title as the State of New Jersey may have in the lands in New York Bay adjoining and surrounding Ellis Island included within the following area, that is to say:

Starting at a point in the center of the filled land near Ellis Island upon which the hospital of the Ellis Island immigrant station now stands, and which is marked upon the annexed map "New Island built 1896", with a radius of fifteen hundred (1500) feet describe a circle. (See map.)

This land is desired by the Government for use in connection with the immigrant station at Ellis Island.

Heretofore, it would seem, the General Government has proceeded upon the theory that the ownership of the lands under water around Ellis Island was in the State of New York. In 1800 New York ceded its jurisdiction over Ellis

Island to the United States; in 1808 it condemned the island and sold it to the United States; and in 1880 it granted to the United States its title and jurisdiction to and over the lands under water around Ellis Island within certain limits.

While there is no question as to the ownership and jurisdiction of New York of and over Ellis Island proper and its power to convey the same to the United States, it would seem from the boundary agreement between New York and New Jersey of September 16, 1833, that the ownership of the lands under water west of the middle of the Hudson River and of the Bay of New York is in the State of New Jersey.

By the act of June 28, 1834, c. 126 (4 Stat. 708, 711), Congress consented to that agreement, upon the condition "that nothing therein contained shall be construed to impair or in any manner affect any right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement."

In my opinion, Congress has the absolute right, in virtue of its constitutional power to regulate interstate and foreign commerce, to use the submerged lands in the navigable waters of the United States for any purpose incident to commerce or navigation, without the consent of the State in which such lands may be, and without making any compensation therefor to their owner, whether State or individual.

I am also of opinion that the Ellis Island immigrant station is properly to be classed as an instrument of commerce, and, therefore, that the use by the United States of the lands under water around the island for the purposes of that station is lawful and constitutional.

But to avoid any dispute about the matter, and in recognition of that principle of comity which should prevail between the State and Federal Governments and which is so vital to their successful and harmonious administration, a

8a

grant of such title as the State of New Jersey may have in the lands in question is deemed advisable and is accordingly solicited.

Respectfully,

/s/ Wm H Moody
Attorney General

APPENDIX D

[Deed for lands surrounding Ellis Island to the high water mark, from the State of New Jersey to the United States of America, 1904.]

NEW JERSEY BY RIP'N COMM'NRS GRANT DATE

TO

NOV'R 30th 1904

UNITED STATES OF AMERICA

THE STATE OF NEW JERSEY: TO ALL TO WHOM
THESE PRESENTS SHALL COME OR MAY CONCERN.

GREETING: WHEREAS Pursuant to an act of the Legislature of said State, approved February 10th, 1891, entitled "A further supplement to an act entitled 'An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State' approved April eleventh, one thousand eight hundred and sixty four," and other acts and joint resolutions of the legislature of said State, The United States of America, being the owner of lands comprising what is known as Ellis Island in the Bay of New York, County of Hudson and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Riparian Commissioners of said State for a grant of the said lands under water, and to have the said Commissioners fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant.

And Whereas, the said Riparian Commissioners, to wit: Franklin Murphy, Governor, William Cloke, Robert Williams, M.F. McLaughlin and John R. Reynolds, having

due regard to the interests of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of One Thousand Dollars (\$1,000) as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefor, the said State of New Jersey, by the said Riparian Commissioners, the Governor approving, in the consideration of the premises, the terms and conditions hereinafter contained, and the said sum of One Thousand Dollars (\$1,000) paid in cash by the United States of America to the said State, the receipt whereof is hereby acknowledged, does hereby grant, sell and convey, unto the said The United States of America, all the right, title, claim and interest of every kind, of the State of New Jersey, in and to all that parcel of land, all of which was formerly and part of which is now flowed by the tide waters of New York Bay, in the County of Hudson and State of New Jersey, described as follows:

SEE RECORDED MAP IN MAP-ROOM

Beginning at a point in the Pierhead and Bulkhead Line established around Ellis Island, in the Upper Bay of New York, by the United States Government, September 12, 1904, and adopted October 26th, 1904, by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State," approved April 11th, A.D. 1864, and the supplements thereto; said point bearing north 15° west, two hundred and thirty (230) feet, from a fixed point or mark now situated in the northerly corner of existing crib or bulkhead of Ellis Island; thence, following said Pierhead and Bulkhead Line, south 53° west, one thousand eight hundred and sixty (1,860) feet to a point; thence, following said line, at right angles, south 37° east, one thousand one hundred and

twenty-five (1,125) feet to a point; thence, following said line, at right angles north 53° west, one thousand eight hundred and sixty (1,860) feet to a point; thence following said line, at right angles north 37° east, one thousand one hundred and twenty-five (1,125) feet to the point of beginning, making a parallelogram one thousand one hundred and twenty-five (1,125) feet by one thousand eight hundred and sixty (1,860) feet as shown upon the official map of the War Department marked "Pierhead and Bulkhead Lines for Ellis Island, New Jersey, New York Harbor, as recommended by the New York Harbor Line Board, June, 1890", said lines having being extended at various times, as indicated on said map, by the Secretary of War, the last extension having been made September 12, 1904. A plan showing the boundaries of said grant is attached hereto and made a part hereof.

Together with all and singular the hereditaments and appurtenances thereunto belonging. To have and to hold all and singular the above grantee and described lands under water and premises unto the said The United States of America, in fee simple, forever.

It is distinctly understood and agreed that by accepting the within grant The United States of America does not waive any rights or privileges which it would possess had not the same been accepted, and that no rights of the grantee of any kind whatsoever shall be prejudiced by such acceptance.

In Witness Whereof, The said Commissioners have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto affixed and attested by the Secretary of State, this Thirtieth day of November in the year Nineteen hundred and four.

Franklin Murphy Governor
William Cloke

(State Seal)

Witness:

Robert Williams
M.F. McLaughlin
J.R. Reynolds
John C. Payne
S.D. Dickinson
Secy of State

STATE OF NEW JERSEY

COUNTY OF HUDSON SS: BE IT REMEMBERED,
That on this Twelfth day of December Nineteen hundred and
four, before me, the subscriber, a Master in Chancery of New
Jersey, personally appear John C. Payne, who, being by me
duly sworn on his oath, saith that he saw Franklin Murphy,
Governor, William Cloke, Robert Williams, M.F.
McLaughlin and John R. Reynolds, the within named
Commissioners, sign and deliver the within deed as their
voluntary act and that he, the said John C. Payne thereupon
subscribed his name as an attesting witness thereto.

Sworn and subscribed before me
at Jersey City the day and year
aforesaid

John C. Payne
George L. Record
Master in Chancery of New Jersey

Rec'd in the Office & Recorded December 23rd 1904
@10,18 A.M. No. 3189.

APPENDIX E

**[Cover and Page 9 of National Park Service publication
identifying landfilled portions of Ellis Island as part of the
State of New Jersey, 1980.]**

**ANALYSIS OF ALTERNATIVES
(ENVIRONMENTAL ASSESSMENT)
FOR THE GENERAL MANAGEMENT PLAN**

**STATUE OF LIBERTY NATIONAL MONUMENT
NEW YORK/NEW JERSEY**

Prepared by

**United States Department of the Interior/National Park
Service/Denver Service Center**

Approved for Distribution

/s/

**Richard L. Stanton,
Regional Director, North Atlantic Region**

REGIONAL SETTING

Liberty and Ellis islands are located in Upper New York Harbor, the entry to one of the largest urbanized regions in the world. The 27.5-acre Ellis Island lies about a mile west of the southern end of Manhattan, less than 1,200 feet from the bulkhead line of New Jersey's Liberty State Park. Liberty Island, about 12.5 acres, lies southwest of Ellis Island and a half mile east of the Jersey City bulkheads.

Both islands lie on the New Jersey side of the state line; however, all of Liberty Island and the original 3.5-acre portion of Ellis Island belong to the state of New York. The remainder of Ellis (24 acres created by landfill), the submerged lands, and the surrounding waters are part of the state of New Jersey.

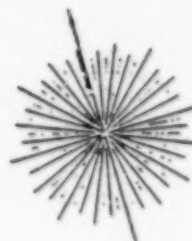
Approximately 22 million people, or 10 percent of this nation's population, reside within a 1½-hour public transportation or automobile ride of the park. In addition, the 17 million national and international visitors who come to the New York City region each year can conveniently reach the park using public transportation facilities.



J-E-R-S-E-Y-C-I-T-Y

NEW JERSEY CENTRAL RAIL ROAD CO'S BOOK

HUDSON RIV.



Mary Q. Lister
Ct. House 30 May 1861
Mrs. Craig Hill
Lepidoptera, A.T.
— — —
Lophocentropus
S. C. H. Mearns
— — —
Vol. of 5000
H. L. Thompson
C. W. Thompson



Bulkhead and Bulkhead Lines
 for
 Ellis Island, New Jersey,
 New York Harbor
 as recommended by the
 New York Harbor Line Board

for the establishment of the American Council of New York Chapter and its adjacent
members by General Order No. 44, 45th Gen. Council of Engineers, U.S.A. Washington, D.C.
Oct. 4, 1900 in accordance with Section 44 of Act of August 11, 1890.

- June 1950 -

Small Name.

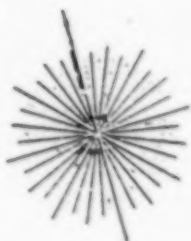
1890, July.

Revised Draft
S. J. 1000

JERSEY CITY

NEW JERSEY CENTRAL RAIL ROAD CO'S DOCKS

HUDSON RIV.



Recommendations made to the Board of Engineers, U.S.A.,
Washington, D.C. dated December 10, 1898.
The Board of Engineers, U.S.A., has approved the plan
submitted by the New York Harbor Line Board for the
construction of the pierhead and bulkhead lines for
Ellis Island, New Jersey, New York Harbor.

Henry O. Ellis
Chas. E. Smith
John H. Smith
John H. Smith
John H. Smith
John H. Smith
John H. Smith
John H. Smith
John H. Smith
John H. Smith



Pierhead and Bulkhead Lines
for
Ellis Island, New Jersey,
New York Harbor
as recommended by the
New York Harbor Line Board

approved
for the construction of the pierhead lines of New York Harbor and its adjacent
waters by General Order No. 10 of the Board of Engineers, U.S.A., Washington, D.C.
Oct. 1, 1898 in accordance with Section 14 of Act of August 2, 1892.

June 1890
Scale 1:1000

For Department

July 3, 1890.

Approved

Respectfully,
[Signature]

For Department

July 10, 1890.

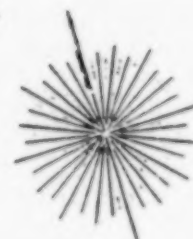
The construction of the pierhead and bulkhead
lines shown on this plan approved

[Signature]
[Signature]

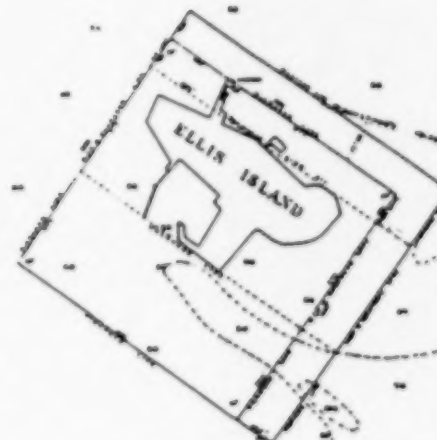
JERSEY CITY

NEW JERSEY CENTRAL RAIL ROAD CO'S DOCKS

HUDSON RIV.



In accordance with the Act of Congress, U.S.A.
Washington D.C. March 3rd 1899.
The Harbor Lines shown on the plan are not yet approved
by the New York Harbor Line Board for the reason
that the lines are not yet approved by the
New York Harbor Line Board.
The lines are not yet approved by the
New York Harbor Line Board.
The lines are not yet approved by the
New York Harbor Line Board.
The lines are not yet approved by the
New York Harbor Line Board.



Pierhead and Bulkhead Lines
for
Ellis Island, New Jersey,
New York Harbor
as recommended by the
New York Harbor Line Board

approved
for the establishment of the Harbor Lines of New York Harbor and its adjacent
waters by General Order No. 10, U.S. Coast of Engineers, U.S.A., Washington D.C.
Oct. 1, 1898 in accordance with Section 14 Act of August 11, 1890.

June 1899



After Department
July 9, 1899.

Richard B. Foster
Surgeon Major

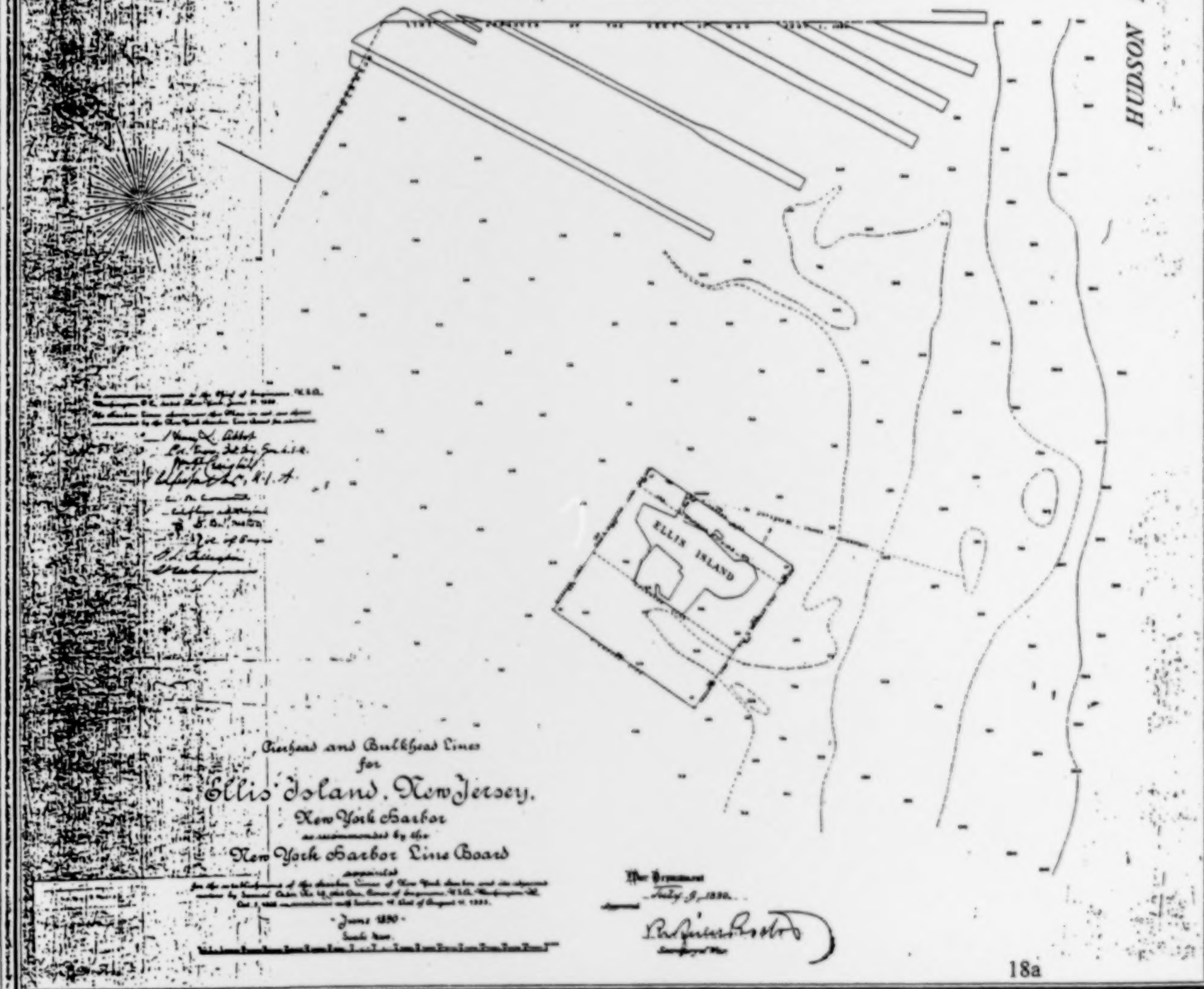
After Department
July 14, 1899.

The modifications of the Harbor and Bulkhead
lines shown on this plan are approved.

Joseph B. Allen
Harbor Engineer

NEW JERSEY CENTRAL RAIL ROAD CO. 0000

WINSON PIV



Reefhead and Bulkhead Lines
for
Ellis Island, New Jersey,
New York Harbor
as recommended by the
New York Harbor Line Board

For the acknowledgments of the American Consul at New York and his agents
written by Samuel Olin, Esq. of New York, dated at New York, August 11, 1823.

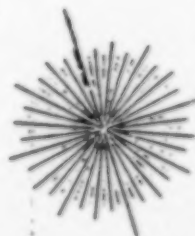
- June 1890 -
Sandy Bay.

Mr. [illegible]
July 9, 1880.
Prof. [illegible]
[illegible]

JERSEY CITY

NEW JERSEY CENTRAL RAIL ROAD CO'S Docks

HUDSON RIV.



As recommended by the Board of Engineers, U.S.C.
Washington D.C. August 10th 1890.
The above lines connect the New York and New Jersey
Harbors by the New York Harbor Line and the Hudson River Line.

Wm. L. Atter
Chas. E. Smith
J. H. Craig
J. H. Craig
J. H. Craig
J. H. Craig
J. H. Craig
J. H. Craig
J. H. Craig
J. H. Craig



Pierhead and Bulkhead Lines
for
Ellis Island, New Jersey.
New York Harbor
as recommended by the
New York Harbor Line Board

approved
for the establishment of the above lines of New York Harbor and its adjacent
waters by General Order No. 10 of the Board of Engineers, U.S.C. Washington D.C.
Oct. 1, 1890 and subsequent acts of Congress of August 11, 1892.

June 1890

Scale 1/2 inch = 1 mile

Published by the New York Harbor Line Board

Mr. Department

July 9, 1890.

Approved
[Signature]
Comptroller

Mr. Department

Feb. 10, 1891.

The modifications to the Pierhead and Bulkhead
Lines shown on this map approved

Approved
[Signature]
Comptroller

JERSEY CITY

NEW JERSEY CENTRAL RAIL ROAD CO'S DOCKS

HUDSON RIV.



As shown on the map of August 1890.
Washington, D.C. June 10, 1890.
The above lines show the location of the
docks as shown on the map of August 1890.

Wm. L. Little
Chas. D. G. G. G.
J. H. G. G.
J. H. G. G.
J. H. G. G.
J. H. G. G.
J. H. G. G.
J. H. G. G.

ENGINEER OFFICE, U.S.A.
New York, N.Y. Aug. 10, 1890.
To accompany instrument to the Chief of Engineers, U.S.A.
of this date.

William G. G.
Lieut. Col., Corps of Engineers, U.S.A.

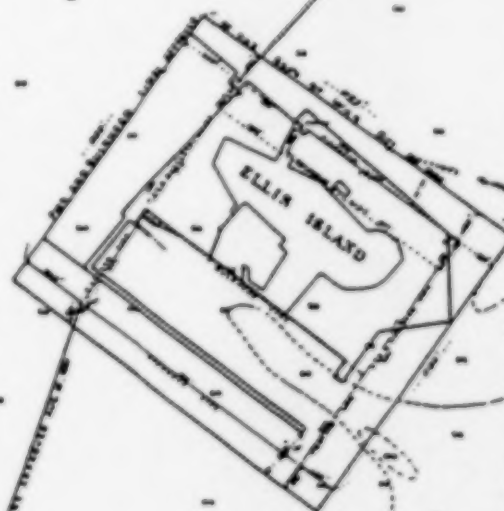
Pierhead and Bulkhead Lines
for
Ellis Island, New Jersey,
New York Harbor
as recommended by the
New York Harbor Line Board

approved
for the establishment of the harbor lines of New York Harbor and its adjacent
waters by General Order No. 10, dated Oct. 10, 1890, Corps of Engineers, U.S.A., Washington, D.C.
Oct. 1, 1890, in accordance with Section 14, Act of August 2, 1890.

June 1890

Scale 1/2 inch = 1 mile

Under the authority of the Chief of Engineers, U.S.A.



20a

Wm. G. G.
July 9, 1890.

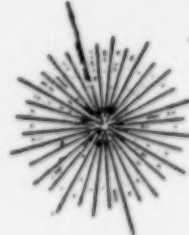
Wm. G. G.
Lieut. Col.

NOTE
Red Lines show the Pier and Bulkhead Lines approved by the City of New York, July 2, 1890.
Blue Lines show the Pier and Bulkhead Lines approved by the City of New York, July 2, 1890.
Black Lines show the Pier and Bulkhead Lines approved by the City of New York, July 2, 1890.
Green Lines show the Pier and Bulkhead Lines approved by the City of New York, July 2, 1890.
Yellow Lines show the Pier and Bulkhead Lines approved by the City of New York, July 2, 1890.

JERSEY CITY

NEW JERSEY CENTRAL RAIL ROAD CO'S DOCKS

For Report
July 1, 1890.
 The modification recommended by the
 Harbor Line Board, and shown herein is
 known to approved.
Woodhull
 Secretary of War.



For Report
 The modification recommended by the
 Harbor Line Board, and shown herein is
 known to approved.
Woodhull
 Secretary of War.

UNIFICATION OF PIERHEAD AND BULKHEAD LINE AT
 ELLIS ISLAND, NEW YORK HARBOR.
 New York Harbor Line Board.
 New York N.Y. July 10, 1890.
 Sent to the Chief of Engineers, U.S.A., Washington D.C. with report of this date.
 The Harbor and Bulkhead Line shown on a 1/2 inch scale of the existing
 map of Ellis Island in the New York Harbor and New York Harbor Line Board.

Henry M. White
 Chief of Engineers, U.S.A.
J. M. Barber
 Chief of Engineers, U.S.A.
S. L. Smith
 Chief of Engineers, U.S.A.
W. H. Rapp
 Chief of Engineers, U.S.A.
William H. Miller
 Chief of Engineers, U.S.A.

Pierhead and Bulkhead Lines
 for

Ellis Island, New Jersey,
 New York Harbor
 as recommended by the
 New York Harbor Line Board

for the unification of the harbor lines of New York Harbor and its adjacent
 waters by General Order No. 10, 1889, Chief of Engineers, U.S.A., Washington D.C.
 Oct. 3, 1889 on construction and location of the New York Harbor Line Board.

June 1890
 Louis New

For Report
 July 9, 1890.

W. H. Rapp
 Secretary of War.

DATE	NAME	POSITION	REMARKS

J E R S E Y C I T Y

NEW JERSEY CENTRAL RAIL ROAD CO'S DOCKS

Mr. Superintendent
July 1, 1907.
The investigation recommended by the
Hearings Board, and shown herein and
before is approved.
Edwin Rusk
Secretary, G. I. B.

War Department
Sept 11 1900
Communication from person in position approved
L. B. Thomsen
Acting Secretary of War

War Department.
Feb. 7, 1911.
The modification of the pierhead and bulkhead lines
on north corner of Ellis Id., shown hereto by broken
black lines thus — — — — — "is approved".
With this modification the bulkhead and pier-
head lines of Ellis Id. on this date are as shown
by the lines shaded thus
J. T. Johnson
Asst. Secretary of War.

[illegible]

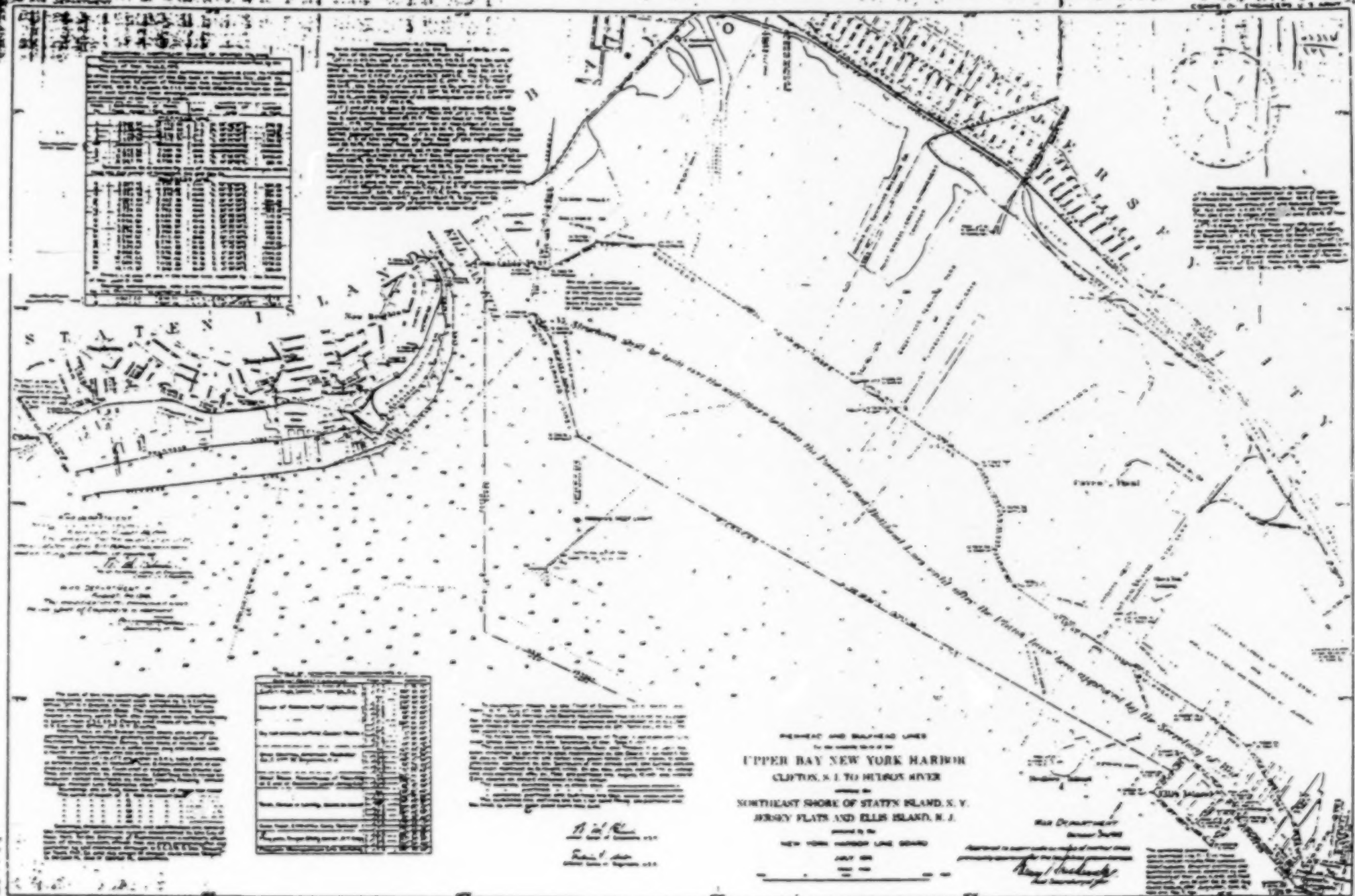
Richmond and Bullhead Lines
for
Ellis Island, New Jersey,
New York Harbor
as recommended by the
New York Harbor Line Board

for the establishment of the American Bureau of New York education and its subject matter by Special Order No. 13 of the U.S. Army of Engineers, W.S.A. Washington D.C. Aug 11 1944 in accordance with letters of that of August 11, 1944.

War Department
July 9, 1890.
Prof. J. H. Root
Secretary of War

[illegible]

APPENDIX G





APPENDIX H

[Relinquishment of title and jurisdiction over lands covered with water and contiguous to lands of the United States at Ellis Island, by the State of New York to the United States of America, 1880.]

LAWS OF NEW YORK.

ONE HUNDRED AND THIRD SESSION.

CHAP. 196

AN ACT relinquishing title and jurisdiction to the United States over certain lands covered with water in the harbor of New York at Governor's, Bedloe's, Ellis' and David's Islands, and Forts Lafayette, Hamilton, Wadsworth and Schuyler.

PASSED May 7, 1880; by
a two-third vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. All the right and title of the State of New York to the following described parcels of land covered with water, adjacent and contiguous to the lands of the United States, in the harbor of New York, at Governor's, Bedloe's, Ellis' and David's Islands, and Forts Lafayette, Hamilton, Wadsworth (or Tompkins), and Schuyler, and jurisdiction over the same are hereby released and ceded to the United States under article one, section eight, paragraph seventeen of the constitution, for the purpose of erecting and maintaining docks, wharves, boat-houses, sea walls, batteries and other needful structures and appurtenances. Said lands covered with water are bounded and described as follows:

* * *

AT ELLIS' ISLAND.

Beginning at a point fifty feet from the head of the east dock and on a line with the north face of said dock; running thence south eighteen degrees thirty minutes east for six hundred and five feet; thence south seventy-one degrees thirty minutes west for two hundred and two feet; thence north eighty-one degrees nineteen minutes west for three hundred and thirteen feet; thence north thirty-two degrees four minutes west for one hundred and seventy-eight feet, this line being parallel to the head of the west dock, and distant fifty feet from said dock; thence due north for five hundred and seventy-seven feet; thence south seventy degrees forty-seven minutes east for four hundred and twenty-four feet to the point of beginning.

* * *

§2. The commissioners of the land office are hereby authorized and directed to issue a patent of said released lands to the United States.

§3. This act shall take effect immediately.

